

Report

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 14 August 2017

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2017-43
LAND USE LUC-2017-222 (91 Formby Street)
LAND USE LUC-2017-223 (99 Formby Street)
91 & 99 FORMBY STREET
OUTRAM

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 14 August 2017. 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.

2. BACKGROUND TO APPLICATION

- [2] The Council received three applications on 27 April 2017 from the applicant, CC Otago Ltd, for the subdivision and development of land at 91 and 99 Formby Street, Outram. The applications were essentially two different proposals contained within the one document.
- [3] The first proposal, LUC-2017-199, was to establish residential activity on 91 Formby Street within a defined building platform. The subject site is legally described as Lot 2 Deposited Plan 7816, held in Computer Freehold Register OT370/243, and has an area of 1.6389ha. While the subject site has Residential 5-zoned land, the proposal was to establish a dwelling on the Rural-zoned portion of the site. As the site has insufficient Rural-zoned land for residential activity to be established as a permitted activity, the Council advised the applicant that LUC-2017-199 would be notified.
- [4] The second proposal was for the subdivision of 99 Formby Street. The subject site is legally described as Part Section 1 Block V West Taieri Survey District, held in Computer Freehold Register OT264/53, and has an area of 3.6422ha. There is an existing dwelling situated close to the Formby Road frontage. The subdivision proposal, SUB-2017-33, sought to create proposed Lot 1, a 1380m² site containing the existing dwelling. The balance land, Lot 2, would be a vacant site of 3.4ha having the potential to be developed with a residential dwelling on Residential 5-zoned land within the new lot. The existing residential dwelling required land use consent, LUC-2017-189, for its establishment on a new mixed-zoned site having insufficient Rural-zoned land, and a shed on the Lot 2 required land use consent for bulk and location breaches in terms of the new boundary. Council was prepared to process the application on a non-notified basis.
- [5] In order to avoid having the subdivision of 99 Formby Street caught in the notification process, the applicant withdrew the application LUC-2017-199 for 91 Formby Street.

This allowed SUB-2017-33 and LUC-2017-189 to be granted on a non-notified basis on 25 May 2017.

DESCRIPTION OF ACTIVITY

- [6] The applicant has now resubmitted the application to develop 91 Formby Street, and a new subdivision and development proposal for Lot 2 SUB-2017-33 at 99 Formby Street.

91 Formby Street:

- [7] 91 Formby Street is a site of 1.6389ha containing Residential 5 and Rural zoned land. It has approximately 27.0m of frontage to Formby Street, but widens at the rear to provide a large open area measuring approximately 105m by 135m. The site is generally level, and has been used in the past for market gardening. It is currently vacant. It has two residential neighbours, 87 and 93 Formby Street, and a rural neighbour at 85 Formby Street. The house of 85 Formby Street is approximately 28m to the west of the northwest corner of the subject site, and the driveway to the house passes along the site's northern boundary.
- [8] The proposal is to define a building platform measuring 40m by 30m on the Rural-zoned portion of the property. The consent will allow a residential dwelling to be established within the building platform, although the application does not specify that accessory buildings are also to be confined to this location. The building platform will be within 40.0m of the northern and western property boundaries, and behind the property of 87 Formby Street. Access will be to Formby Street via a new driveway.

99 Formby Street:

- [9] 99 Formby Street also has mixed Residential 5 and Rural zoned land. The Residential 5 zoning is arranged along the north-eastern side of the property, next to the Formby Street frontage, and varies in width from approximately 37m to 50m measuring from the road boundary. Approximately 2.7ha of the property is zoned Rural. The site is a corner property and also has frontage to Huntly Road.
- [10] The proposed subdivision will create nine new lots. Proposed Lot 1 will be the corner site, and will have an area of 1550m². Lots 2 to 8 will be rectangular parcels situated along the Formby Road frontage, each having 21m of frontage, a depth of 52m, and an area of 1090m². All of Lots 1 to 8 will have mixed zoning, with Residential 5 being the predominant zone. Proposed Lot 9 will have an area of 2.6ha. It will have frontage to Huntly Road and a 6m wide leg-in to Formby Street. A portion of the leg-in will be zoned Residential 5, but otherwise the site is zoned Rural.
- [11] Because of the mixed zoning resulting in all nine lots having less than 15.0ha of Rural zoned land, and some of the lots having less than 1000m² of Residential 5-zoned land, land use consent is required to establish residential activity on the new lots. The future dwellings on Lots 1 to 8 will not maintain a yard of 40m in respect of their rear, Rural-zoned boundaries but should be able to maintain Residential 5-zone yard spaces. In the case of Lot 9, the residential activity is to be confined to a building platform measuring 40.0m by 30.0m situated more or less centrally within the northern half of the property. The building platform will comply with the yard requirements for the Rural zone.
- [12] The application includes an assessment of effects on the environment, and a preliminary site investigation for ground contamination. A copy of the application is attached to this report in Appendix A.

3. ACTIVITY STATUS

- [13] Dunedin currently has two district plans: The Dunedin City District Plan and the Proposed Section Generation Dunedin City District Plan (the Proposed Plan). The

Proposed Plan was notified on 26 September 2015 and is currently proceeding through the public process of becoming the operative plan. Until the rules of the Proposed Plan become operative, the current District Plan remains the operative plan. Where the rules of the Proposed Plan have been given effect, the provisions of both plans need to be considered.

- [14] Section 88A of the Resource Management Act 1991 states that the activity status of an application is determined at the time of lodging the consent. The activity status could, therefore, be determined by the current District Plan or the Proposed Plan, depending on which rules are operative at the time. Nevertheless, even if it is the current District Plan which determines the activity status of the application, the rules of a proposed plan must be considered during the assessment of the application pursuant to section 104(1)(b) of the Act.

- [15] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

- [16] In the Dunedin City District Plan, the subject sites have mixed zoning: **Rural**, and **Residential 5** zoning along the Formby Street road frontage. The Hazards Register shows the subjects sites to be subject to the following risks: **10111 – Seismic (intensified shaking)**, **(11407 – Seismic (liquefaction))**, **11548 – Contaminated land** and **11582 – flood (overland flow path)**.

Subdivision Activity:

99 Formby Street:

- [17] Rule 18.5.1(iii) lists subdivision in the Residential zones as a restricted discretionary activity where the application complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12, and each site complies with minimum area and frontage requirements of the relevant zone, or a multi-unit residential activity complies with the requirements of permitted activities within the original site including overall density. Minimum lot size for the Residential 5 zone is 1000m². All nine lots will be mixed zoned lots with a portion of Residential 5-zoned land, but not all the lots will contain more than 1000m² of Residential 5-zoned land.
- [18] Rule 18.5.1(i) lists subdivision as a restricted discretionary activity in the Rural zone where the application complies with Rules 18.5.3 – 18.5.6, 18.5.9 and 18.5.10, and each resulting site is 15.0ha or larger. As above, all the proposed lots will be mixed zoned, but none will have 15.0ha of Rural-zoned land.

- [19] For the above reasons, the subdivision is considered to be a **non-complying** activity pursuant to Rule 18.5.2.

Land Use Activity:

99 Formby Street:

- [20] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity for the Rural zone, provided that the minimum area of the site is not less than 15ha. None of the new lots will have more than 15.0ha of Rural zoned land and the residential activity of all new lots will be **non-complying** activities pursuant to Rule 6.5.7(i). This is of particular relevance to Lot 9 which is the only site to have a proposed house site on Rural-zoned land.
- [21] Rule 8.11.1(i) lists residential activity at a density of not less than 1000m² of site area per residential unit as being a permitted activity for the Residential 5 zone, subject to compliance with the performance criteria. Provided proposed Lots 1 to 8 have at least 1000m² of Residential 5-zoned land, and the dwelling is situated within the residential zoning, the residential activity of the lots is anticipated although not necessarily a permitted activity in this case because of the mixed zoning of the proposed lots. Lot 1,

and possibly some or all of proposed Lots 2 to 4, will meet this requirement. However, not all proposed lots will have 1000m² of residential land. The residential activity of those lots which do not is considered to be a **non-complying** activity under the Residential zone rules pursuant to Rule 8.11.6(iii).

[22] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to acceptable use of the sites. The rear boundaries of Lots 1 to 8 will all be in the Rural zone, and will fail to comply with the following:

- Rule 6.5.3(i)(b) requires residential buildings in the Rural zone to maintain 40.0m side and rear yards. None of the future houses built on Lot 1 to 8 will be able to maintain a 40.0m yard space from their rear boundaries.

91 Formby Street:

[23] 91 Formby Street has over 1000m² of Residential 5-zoned land, but the proposed building platform is situated on Rural-zoned land and the residential zone rules are not applicable.

[24] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity, provided that the minimum area of the site is no less than 15ha. The proposed residential activity for 91 Formby Street will be situated on a site having less than 15ha of Rural-zoned land. Accordingly, the residential activity for this site is considered to be a **non-complying** activity pursuant to Rule 6.5.7(i).

[25] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to acceptable use of the sites. The proposed building platform of 91 Formby Street will fail to comply with the following:

- Rule 6.5.3(i)(b) requires residential buildings in the Rural zone to maintain 40.0m side and rear yards. The proposed building platform will be positioned approximately 35.0m from the northern side boundary, and 30.0m from the western rear boundary, therefore breaching these yard spaces by 5.0m and 10.0m respectively.

The Proposed Plan

[26] The subject sites have mixed **Rural – Taieri Plains** and **Township and Settlement** zoning, with the residential zoning distributed in a strip along the edge of Formby Street. The residential zoned land has **No DCC Reticulated Wastewater** servicing. The rural zoned land has **High Class Soils**. The general area has a **Hazard 2 – Flood** risk.

Subdivision Activity:

99 Formby Street:

[27] Rule 15.3.5.2 lists general subdivision in the residential zones as being a restricted discretionary activity subject to compliance with the performance standards. Rule 15.7.4.1(i) sets the minimum site size for the Township and Settlement zone (no DCC reticulated wastewater mapped area) as being 1000m². Not all lots of the subdivision will meet have more than 1000m² of residential land. The subdivision is considered to be a non-complying activity pursuant to Rule 15.7.4.2. This rule is not in effect.

[28] Rule 16.3.5.1 specifies that subdivision is a restricted discretionary activity in the Rural zones, subject to compliance with the performance criteria. The proposed subdivision will fail to comply with Rule 16.7.4.1(g) which sets the minimum site size for the Rural – Taieri Plains zone at 40.0ha.

[29] While the Rural Section rules of the Proposed Plan are subject to submissions, and therefore have yet to be finalised, Rule 16.7.4 (minimum site size for rural zones) and

Rule 16.9.5.5 (assessment of subdivision performance standard contraventions – minimum site size) were given immediate legal effect pursuant to section 86D of the Resource Management Act 1991 at the time of notification. This direction was sought from the Court because the Council has significant concerns with the subdivision of rural land, and the potential consequences of development in anticipation of more restrictive rules for subdivision. Accordingly, the non-compliance of the subdivision proposal with Rule 16.7.4 results in an activity status of **non-complying** pursuant to Rule 16.7.4.3.

Land Use Activity:

- [30] Under the rules of the Proposed Plan, activities have both a land use activity and a development activity component.

Land Use Activity:

99 Formby Street:

- [31] Rule 15.3.3.3 lists residential activity as a permitted activity in the residential zones subject to the performance criteria. Rule 15.5.2.1 specifies a minimum site area of 1000m² for a residential activity in the Township and Settlement zone within the no DCC reticulated wastewater mapped area. Not all the new lots will meet this requirement, and the residential activity will be a non-complying activity pursuant to Rule 15.5.2.7. This rule is not in effect.
- [32] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. Rule 16.5.2.1(g) specifies that the first residential activity on a rural site in the Rural – Taieri Plains zone requires 25.0ha of land for it to be a permitted activity. All the proposed lots will have less than 25.0ha; therefore, residential activity for these sites is considered to be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

91 Formby Street

- [33] Rule 16.5.2.1(g) specifies that the first residential activity on a rural site in the Rural – Taieri Plains zone requires 25.0ha of land for it to be a permitted activity. 91 Formby Street has less than 25.0ha of Rural zoned land, and the house on this site is considered to be a non-complying activity. This rule is not in effect or operative.

Development Activity:

99 Formby Street:

- [34] There are no actual building proposals for any of the new sites, but residential activity is anticipated on each of proposed Lots 1 to 8, and within the proposed building platform of proposed Lot 9. Rule 16.3.4.5 lists the construction of new buildings greater than 60m² as being a permitted activity in the rural zones, subject to the performance standards.
- [35] Rule 16.6.11.1(a) of the Rural Section specifies that residential buildings are to maintain 20m setback from road boundaries, and 40m setback from neighbouring boundaries. The back boundary of each of proposed Lots 1 to 8 is within the Rural – Taieri Plains zone. None of the houses built on these lots will be able to maintain a 40.0m yard space. The new development is considered to be a restricted discretionary activity pursuant to Rule 16.3.2.13. This rule is not in effect.
- [36] Rule 15.6.14(a)(vii) specifies that new buildings have 4.5m setbacks from road boundaries and 2.0m setbacks from all other boundaries. No building proposals have been proposed for any of Lots 1 to 8, but it is accepted that it is possible to construct dwellings within the new lots that will comply with these setbacks.

91 Formby Street:

- [37] The proposed building site for 91 Formby Street will fall within the 40.0m yard space along the northern and western boundaries. The new development is considered to be a restricted discretionary activity pursuant to Rule 16.3.2.13. This rule is not in effect.

Overall Proposed Plan Status:

- [38] Having regard to both the land use and development activity components under the Proposed Plan, the residential activity of all the proposed lots and 91 Formby Street is considered to be a non-complying activity.

Summary

- [39] The application was lodged on 17 May 2017, after the close of submissions on the Proposed Plan. The residential and rural zone rules are subject to submissions and could change as a result of the subdivision process. However, Rule 16.7.4 (regarding minimum site size for the subdivision of Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules apply to the subdivision of Rural land but all other rules are not relevant to the subdivision or land use activity status of the application as determined at the time of lodgement.
- [40] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan and the Proposed Plan, and is considered to be a **non-complying** activity. The activity status of the residential activity for the new sites and 91 Formby Street is determined by the Dunedin City District Plan, and is also considered to be a **non-complying** activity.
- [41] At the time of assessing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sites has been given effect, and is applicable to this application, but is subject to submissions. All other relevant rules are not in effect and are also subject to submissions. The rules could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision application except for the minimum site size rule which needs to be weighted accordingly.

NES Soil Contamination Considerations:

- [42] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [43] The applicant has submitted a preliminary site investigation report (PSI) dated November 2015, prepared by Environmental Consultants Otago Ltd ('EC Otago') for 99 Formby Street and 498 Allanton Road. The details regarding 498 Formby Street are not relevant to this application, and there is no commentary on 91 Formby Street as part of the PSI. Having noted that, Figure 16 of the PSI shows 91 Formby Street to be included as part of the subject land, and there was one soil sample taken within this site ('4C').
- [44] The PSI confirms that there is historical evidence of HAIL land use occurring on the property of 99 Formby Street and possibly 91 Formby Street, listing categories A1, A10, and A17. As such, the Council needs to issue consent under the provisions of the NES for the subdivision and/or change in use of a HAIL site. Given that a Detailed Site

Investigation report for the site does not exist, the consent will be a **discretionary** activity pursuant to Regulation 11 of the NES.

- [45] Overall, taking into consideration the District Plan, Proposed Plan and NES activity statuses, the subdivision is considered to be a **non-complying** activity. The land use consents sought are similarly a **non-complying** activity.

4. NOTIFICATION AND SUBMISSIONS

- [46] The written approval of the persons detailed in the table below has been obtained. In accordance with Section 104(3)(a)(ii) of the Resource Management Act, the Council cannot have regard to the effects of the activity on these persons.

Person	Owner	Occupier	Address	Obtained
Kent Duncan & Brendon Tisdall	✓	✓	93 Formby Street	23 April 2017
Fergus & Joy Nicolson	✓	✓	85 Formby Street	21 April 2017
Geoffrey Jackson & Avis Bennett	✓	✓	87 Formby Street	21 April 2017

- [47] The application has been submitted without plans signed by the above parties, so it is not clear that these persons are entirely familiar with the application details. However, all three parties were directly notified as part of this resource consent process, and none have submitted on the application. Accordingly, the affected party approvals are considered to stand despite the lack of signed plans.
- [48] Section 95A of the Act directs that a consent authority may notify an application if the effects on the environment are likely to be more than minor, the applicant requests public notification, or special circumstances may apply. In this case, the applicant has requested that the applications be notified.
- [49] The application was publicly notified in the Otago Daily Times on 27 May 2017. Copies of the application were sent to those parties whom the Council considered could be directly affected by the proposal.
- [50] Six submissions were received following notification. One submission was neutral in its stance, and the other five submissions oppose the application. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Donna Peacock	Oppose	- Comprehensive framework to manage effects of use and development. - Setting a precedent for subdivision of land on good food-producing soil on Taieri. - Inappropriate use of land for housing. - Requests that the application be declined in accordance with section 4 of District Plan and objective 4.2.5. - Opposition based on Sustainability Section 4. - Application a non-complying activity. - Exceptions to District Plan should only be made after extensive public consultation and consideration of need of future generations. - House on 1.63ha at 91 Formby Street is a particular concern. Need 15.0ha. - Council should not consider exceptions to	No.

		District Plan based on personal desire. • Exception to rule is seen as a decision for personal monetary gain rather than for benefit of community at large. • Land lost to housing developments if precedent set. Causes inflation on land values. • Refers to Holyhead Street subdivision currently notified. Council should consider previous decisions. • Granting applications for 're-zoning' in piecemeal fashion in opposition to District Plan will mean expansion of housing on quality food-growing land. • Accumulative loss of available top-class soil for essential community food sources. • Quote. Section 5 RMA. • Taieri Plain recognised as having high-quality soils; could play significant role in food availability of Dunedin community in future. • Require vigilance and forward-looking decisions if children are to have provision for basic needs of essential food security. • Food used to be close at hand. Dunedin now sources food from Christchurch and north. Increase in supermarket systems and land price increase resulting from growing dairying and housing industries. • Disrupted transport systems are likely to mean food depletion for a long period. • Need to consider transportation and the need to reduce our emissions. • Future rise in cost of food is anticipated. Lists reasons. • Only local grower in Taieri who sells to Otago Farmers Market has recently sold. Other vegetable stalls are in Central and North Otago. • A return of market gardening to Taieri will not be brought about by market forces. • Future proofing of our land. Piecemeal development without long-term consideration will lead to lack of flexibility for other land uses. Food will increasingly be grown close to cities and towns. • Monetary gain of present owners not legitimate reason to make exceptions. Future proofing of food security and needs of community as a whole should take precedence. • Community ownership of land would result in it being worked by community with the development and experience and skills in young people; and supplying the local Farmer's Market. The expertise of many existing groups of experienced and skilled people could be utilised. • Request that comprehensive overview and planning be undertaken by Council to manage use and development of high class soils. • Council could look at possibility of land being bought by Council for this purpose. Council's foresight in purchasing tract of Otago Peninsula is an example of what could be	
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		- done. - Further development of Taieri land without due consideration of future climate and food will jeopardise our food sources. - Citizen and Council responsibility to future generations is great, considering the world's and NZ's future resource limitation. Council has responsibility to present and future generations to ensure communities and City have food security.	
2. Andy Barratt	Oppose	- Represents Food Network Dunedin, and informal group promoting local food production. - Oppose application on grounds that it will take high class soils in the Rural zone out of productive use by allowing residential development. - Requests that the application be declined in entirety.	Yes.
3. Dunedin Rural Development (RDR)	Oppose	- RDR been in existence for over 22 years. - Prime objective is to identify, assess, development and introduce to Dunedin rural opportunities. - DRD runs field days, seminars and facilitates activities in rural section. - Provided \$30 000 in funding in association with ORC for landcare research to identify soils in Otago. - Opposes application on basis of loss of and long-term protection of high class soils. - Appears application being accelerated before rule changes of Proposed Plan. - Whole of 91 and 99 Formby Street are occupied by high class soils. Identifies the three types of soils present. - Appendix One highlights key national and location issues, and concerns over ongoing cumulative loss of high class soils. Once lost, no reversal system. - Appendix Two portrays clear picture on present high class soils that exist within Dunedin area. Only about 5% of land left supporting high class soils. Cannot afford to continue to lose these sites to subdivision and building developments. - High class soils are a finite limited resource and need to be protected and managed for primary production now and into future. - Site maybe no longer economic for market gardening but no valid reason to allow new building on high class soils. Future production opportunities will be lost. - Incorrect to say 'little impact' on high class soils. Undervalues importance of soil resource. Loss of soils in situ that is the issue. - No mention of carriageway to building sites of 91 Formby Street and Lot 9. Calculates building sites and access result in loss of 0.4ha of high class soils. Other small buildings can follow.	Yes.
4. LA Nicol & PW Carr	Neutral	- Residents on Huntly Road opposite subdivision. - Purchased property five years ago because of	No

		- rural outlook and all day sun. - Knew that land at Formby Street could be subdivided in future. Do not oppose, but request condition that trees or hedges on Huntly Road boundary be restricted to 2m maximum height. - This will protect full front of submitters' house from shading. Huntly Road will not be in shade, causing ice in winter and making busy road dangerous.	
5. Brian Miller	Oppose	- The proposal is contrary to the Otago Regional Policy Statement. - The regional policy statement is the overarching document that all Otago Councils must adhere to. - Contrary to both the current and Proposed District Plans. - Should be no more residential development in Outram until a property sewage system is installed to replace present septic tank system. - Requests that the application be declined.	Yes.
6. Patricia Scott	Oppose	- Outram resident. - The Council should adhere to its own District Plan, especially when granting non-complying activities could set a precedent. - Council has a commitment to protect high class soils, which it should uphold. - Section 4 Sustainability: objectives listed. - Subdivision and land use proposals are non – complying. - Submitter reluctant to oppose subdivision as applicant has tried selling property as a whole and has failed to do so. Understands that applicant wishes to retire and realise her assets. - Landowners may indeed realise assets when they retire, but this does not mean that Council should consider it a legitimate reasons to make exceptions to District Plan. - If this were to become an accepted reason for 're-zoning', allowing owner to inflate the value of their land, then we could see large sections of the Taieri Plain subdivided for housing. - Submitter does not agree with earlier decisions of Council to rezone land in Outram for residential development, but accepts it as a fait accompli. - Land fronting Formby Street is already residential. Does not oppose subdivision of Lot 2 into 1 to 8 sections fronting Formby Street. - Concerned about residential dwellings on 91 Formby Street and Lot 9 on Rural-zoned land. - Rural zoning reflects its potential for food production. Soils are high class soils. Historically market gardens. If granted, unlikely to be used for food production in future. Council should reject applications. - Rule 4.2.2 - level of infrastructural services is appropriate to potential density and intensity of development, amenity values. - No sewage infrastructure for Outram.	Yes.

		• Does Council know capacity of residential land to continue use of septic tanks? • Does Council monitor the present situation? • Likely to be wastewater, nutrients and gut pathogens leaking into soil and Taieri river. More housing is greater stress on soil and river. • Further residential development could lead to proposal for Council to build a sewage system for Outram connected to City's system. That would increase pressure for more residential development and loss of more rural land. • If granted, will set a precedent. Valuable high class soils will be overtaken by housing. Refers to Holyhead Street subdivision. • Cumulative effects on amenity values, soil and water quality of township, and loss of high class soils. Quotes section 5 RMA from Holyhead Street plan change decision. "We do not consider that the lack of economic use for the land in recent years will necessarily be the case for the future." • Future use of land very significant at this time in history. A time of great change. Threats: climate change, oil limitations, food security. Council has responsibility to ensure communities and City have food security. • Taieri Plain was for many years big supplier of fruit and vegetables. Factors have influenced decline in market gardening and orchards. Loss of skills. • Dunedin largely dependent on importing fresh produce from Christchurch and north. Earthquake or land slips could put delivery of fresh produce to City at risk for weeks. Causes. Prudent for City to plan for a secure supply of fresh produce grown locally. • Small groups have increased supply of local food through community gardens. Home vegetable gardening also on increase. Individuals, restaurants and institutions have limited access to locally grown produce. • Otago Farmers Market give people access to fresh produce, but last local supplier of any scale will not be there in a few months. • If consent granted for houses on rural blocks smaller than 15.0ha, then food security is jeopardised. • Not enough to turn application down. Section 4 of District Plan, objective 4.2.5, Council develop a comprehensive planning framework to manage the use and development of high class soils on Taieri. • Perhaps Council could set up a Land Trust which would lease small parcels of land to would-be growers. • Citizens could invest in Trust, and if Council owns land, it ensures security.	
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5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [51] Section 104(1)(a) of the Act requires that the consent authority have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in the section 3 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.*
- [52] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.
- [53] Neither the District Plan nor the Proposed Plan allows any subdivision to occur as of right. All subdivisions are either restricted discretionary activities where the proposal meets all District Plan requirements, or non-complying activities where the proposal does not. Council rarely declines consent for proposals that create new sites meeting the minimum lot size, access, servicing and other requirements of the District Plan. In such cases, the subdivision consent is a means of ensuring to Council's satisfaction that all necessary subdivision matters, e.g. infrastructure, are adequately addressed, and is not an indication that Council is opposed to the subdivision.
- [54] In this case, the proposed subdivision is a non-complying activity under the rules of both the District Plan and Proposed Plan because of the undersized nature of the Rural-zoned lots. The Residential 5-zoned lots, Lots 1 to 8, all contain a portion of Rural-zone land, placing them into the same category. No subdivision of this land into lots of the sizes proposed is anticipated under the rules of either Plan.
- [55] In regards to the proposed land use for the new lots, only the current operative District Plan rules are in effect or operative in respect of the zoning. There is sufficient Residential 5-zoned land within 99 Formby Street for up to eight houses to be established along the Formby Street frontage in accordance with the zone expectations (although not necessarily as a permitted activity). The split zoning complicates the expectations for this land as the existing sites of 91 and 99 Formby Street, and all the new lots of SUB-2017-43, will have both Rural and Residential 5 zoned land. There is insufficient Rural-zoned land in all cases for a house to be established as a permitted activity. Nevertheless, one house on 91 Formby Street and eight houses on 99 Formby Street could be expected to be established without any real challenge to the District Plan provided the housing was confined fully to the Residential 5-zoned portions of the sites.
- [56] In summary, there is no permitted baseline to apply for subdivision, although it is likely a restricted discretionary subdivision proposal would be granted consent on a non-notified basis. There is very limited permitted baseline to apply for the development of the land because of the mixed zoning of the sites, although houses on

the Residential 5 portions of the subject sites at a density of not less than 1000m² per residential unit is anticipated.

[57] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7, 17.8, 18.6.1, and 20.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan:

- Lot Size and Dimensions
- Easements & Encumbrances
- Infrastructure
- Hazards
- NES Matters
- Building Platforms and Bulk and Location
- Residential Units and High Class Soils
- Landscape
- Transportation
- Archaeological Sites
- Earthworks
- Physical Limitations
- Amenity Values
- Conflict and Reverse Sensitivity
- Cumulative Effects
- Sustainability

[58] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site.

Lot Size and Dimensions (Assessment Matter 18.6.1(q) [District Plan] and Rule 16.9.5.5 [Proposed Plan])

[59] The subdivision proposal only affects 99 Formby Street, as no changes to the boundaries of 91 Formby Street are proposed.

[60] The proposed subdivision will create eight residential lots along the Formby Street frontage of the subject site, and one large site to their rear. Lot 1 will be the corner site at the intersection of Formby Street and Huntly Road, and will have an area of 1550m² to accommodate two front yards and two lines of power lines along the Huntly Road frontage of the site. Proposed Lots 2 to 8 will each have areas of 1090m², and will be rectangular sites of 21.0m by 52.0m.

[61] The proposed residential lots of Lots 1 to 8 will be relatively long and narrow but are not atypical for residential lots. Early surveyors often set out residential suburbs with lots measuring 100 links by 250 links (or 20.12m by 50.29m). This is true of Outram, where the original grid layout of the streets and sections is still very evident. The proposed lots will therefore reflect the predominant pattern of development for Outram. Each lot will have frontage to legal road, and will be generally level and be a suitable size and shape suitable for residential development in terms of the Residential 5 zoning.

[62] The lots will be predominantly Residential 5-zoned land, but all will contain a portion of Rural-zoned land along their western (rear) side. This rural land will range from in width from nothing at the southern boundary of Lot 1, to 12m or so at Lot 8. The difference in width arises because the zone boundary is not parallel with the Formby Street roadside boundary. The zone boundary appears to have been drawn so as to join the corner of the residential property at 93 Formby Street with the side boundary of 35 Huntly Road and not because of any specific feature on the subject site itself. Despite its slightly random and variable width, the zoning indicates that a line of housing along the Formby Street frontage is anticipated by the current District Plan. There is enough Residential 5-zoned land for eight houses, and the eight residential

sites facilitate this development even though the regular shape of the new lots catches some Rural-zoned land within each lot. No change is proposed in relation to the equivalent zoning provisions of the Proposed Plan.

- [63] Proposed Lot 9 will be a site of 2.6ha with frontage to Huntly Road. It will also have a 6.0m wide leg-in from Formby Street. Lot 9 will contain almost all of the Rural-zoned land but will include a small section of Residential 5-zoned land within the leg-in. There is less than 1000m² of Residential 5-zoned land within the proposed lot, and accordingly, there is no argument that a residential dwelling is anticipated by the District Plan for this land. The proposed lot is, however, large enough for a residential dwelling to be established elsewhere, notwithstanding the zoning.
- [64] There is no opportunity for 99 Formby Street to be subdivided so as to create a complying Rural-zoned lot. Minimum site size for the Rural zone is set at 15.0ha in the District Plan. The rural portion of the existing site of 99 Formby Street is approximately 18% of minimum site size. Under the Proposed Plan, minimum site size for the Rural-Taieri Plains zone is 40.0ha, so the existing 2.7ha of rural zoned land is only 6.7% of minimum site size.
- [65] A subdivision along a zone boundary so as to separate the zones onto different titles is not necessarily an undesirable option for a mixed-zoned site. The resulting sites are not an issue, regardless of their size, provided all the land of each zone is contained within a complying lot or a single lot, and there is a viable land use for all the new lots created. The land use will almost always include residential activity as people like to live on their property. The creation of new sites with no development rights is problematic.
- [66] In this case, the subdivision almost manages to follow the zone boundary, and will keep the majority of the Rural-zoned land (although not the entire amount) within proposed Lot 9. This new lot will have sufficient Rural-zoned land to achieve 17% of minimum site size under the District Plan, and 6.3% of minimum site size for the Rural-Taieri Plains zone. The proposed subdivision does not really fragment the rural land as the majority of the rural zoning will be contained within Lot 9. What the subdivision achieves is the separation of the residential land from Lot 9 leaving a small rural site with no opportunity for development with a house without creating a significant breach of the density provisions of the District Plan.
- [67] If Lot 9 were intended for rural productive purposes, then a more logical layout would be to attach it to one of the proposed house sites of Lots 1 to 8. This would provide a building site within the Residential 5-zoned land while leaving the bulk of the land available for pasture or cropping. Instead, the applicant has nominated a building site in the centre of Lot 9 which will not only occupy productive land but will limit the productive potential of the rest of the site. Realistically, Lot 9 is not concerned with rural production but is to become a large residential site of 2.6ha.
- [68] I consider that the layout of the proposed subdivision is logical. It retains the residential development predominantly to the Residential 5-zoned land, and will result in a line of development next to Formby Street, as expected (even if the zoning of the new lots is not as tidy as it could be). I am less supportive of the creation of Lot 9 because, if the subdivision and land use consent is granted, it will introduce a residential dwelling to the area in a location where a house is not anticipated and it is not conducive to permitted rural activities. Not only that, but there will be one more house on this subject site than the zoning suggests is acceptable.
- [69] Only eight residential dwellings are expected for this location, and the subdivision will facilitate a total of nine. It is my opinion that the overall number of residential units should be maintained at eight. The land should be subdivided into a maximum of eight new lots, each with sufficient Residential 5-zoned land to accommodate a new house. One of these eight lots should contain all the Rural zoned land as well. If the owner of

the new lot containing all the Rural-zoned land sought to build in the rural zoning rather than the residential zoning (as is the case proposed for 91 Formby Street), then the merits of such a proposal could be considered without there also being an overall breach of density occurring.

Easements (18.6.1(i)) and Encumbrances

- [70] There are no existing easements registered on the titles of either subject site, and no proposal to create any easements as part of this subdivision or these development proposals. However, I note that there are power lines within the site along the Huntly Road frontage and it might be advisable to create an easement in gross for these existing power lines.
- [71] There are two historic gazette notices 2781 and 2782 dating from 1915 registered on both subject titles. These exempt the requirement to take road widening at the time of subdivision along the Formby Street and Huntly Road frontages of the properties and therefore have no real consequences for the subject site.

Infrastructure (8.13.10 & 18.6.2(d), (e), (i), (j), (n), (o), and (p))

- [72] The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She notes that a review of Council's GIS records shows a 100mm diameter water pipe in Formby Street.
- [73] There are no existing water connections to the proposed lots as the metered supply for 99 Formby Street serves the house now on Lot 1 SUB-2017-33. Lots 1 to 8 are located mostly within the Residential 5 zone, and within the Dunedin City Council Water Bylaw 2011 Water Supply Area. Therefore, each of Lots 1 to 8 are able to connect to the Council's water supply on Formby Street. Should consent be granted, each lot is required to be serviced from an individual Point of Supply as defined by the bylaw. New connections will be approved through the 'Application for Water Supply' process; this will be a condition of consent. All new water service connections to the proposed development must be in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.
- [74] The applicant has requested a water connection to the water main on Formby Street for the proposed dwelling on the Rural-zoned portion of Lot 9. This is also within the water supply area. 91 Formby Street is undergoing a similar proposal but is beyond the Water Supply Area Boundary, and approval for an 'extraordinary supply' would normally need to be made to the Infrastructure Services and Networks Committee (IS&NC). However, the Water and Waste Services Business Unit has decided, following discussions with City Development and the ISCOM Chair, to take a different approach to this proposal in recognition of the uniqueness of the Outram water scheme. The proposed house site of 91 Formby Street will be considered by the Water and Waste Services Business Unit as if it is entirely 'in-zone'. A decision on the connection will be made for 91 Formby Street by the Water and Waste Services Business Unit staff, with the planning considerations as to the appropriateness of the development being left to the consent process. Should consent be granted, the applicant will be able to submit an application for connection in the usual manner to get the standard water application process initiated.
- [75] All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. There is a fire hydrant (WFH04699) 87.0m from 99 Formby Street. Based on SNZ PAS 4509:2008 a W3 (25l/s) zone requires a fire hydrant within 135.0m and a second within 270.0m. The development will be compliant with these fire hydrant requirements.
- [76] There is no Council-owned stormwater infrastructure in Outram. Disposal of stormwater shall go to the water table and/or watercourses on-site, or to a suitably

designed on-site soak-away/infiltration system or rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.

- [77] Likewise, there are no reticulated wastewater services available for connection in Outram. Any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.
- [78] The Water and Waste Services Business Unit has not identified any concerns about the servicing of the new lots and new development, subject to conditions consistent with the above points. Although 91 Formby Street is outside of the water supply area, the Water and Waste Service Business Unit is prepared to supply water to the new house should the Committee consider the new house of 91 Formby Street is acceptable.
- [79] One submitter opposes the application because of the lack of reticulated sewage in Outram. He considers that there should be no more residential building in Outram until a property sewage system is installed to replace the present septic tank system. There is currently no scheme to install a community sewage system for Outram and the Water and Waste Services Business Unit has not identified any issues in terms of on-site servicing in the area to indicate that such a scheme is required.
- [80] Nor do comments (attached in Appendix E) provided by the Otago Regional Council highlight any concerns about the servicing of the lots except for stormwater discharge. The Otago Regional Council did not formally submit on the application.. The Otago Regional Council advises that if any stormwater is to be discharged from the site (for example, to the roadside drain), it will be important to ensure that the quality and quantity of stormwater does not exacerbate or increase any adverse effects over that which occurred from the greenfield site prior to development. This is also important in terms of water quality. Policy 6.5.2 of the Otago Regional Council's Water Plan covers this matter.
- [81] Overall, the proposed development of 91 and 99 Formby Street will be self-serviced except for water supply, and is not expected to create any issues for the existing infrastructure of Outram.

Hazards (18.6.1(t))

- [82] The Consulting Engineer, MWH, has considered the application in relation to the Hazards Register, street files and available aerial photography. The Hazards Register identifies the following hazards:
- Intensified Shaking – earthquake likely amplification;
 - The site is recorded on the GNS Assessment of Liquefaction hazards in Dunedin City, dated May 2014, as being within Liquefaction Domain C. 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.
 - HAIL Site –Contaminated Land from Persistent pesticide bulk storage or use; and
 - Flood Hazard Area 1B.
- [83] The flooding risk and seismic issues are assessed below in paragraphs [84] to [87]. The HAIL issue is addressed in the next section under NES matters.
- [84] The property lies within an area reported on by ORC report: Flood hazard on the Taieri Plain, Review of Dunedin City District Plan: Natural hazards First revision: August 2015; with the following description:

Area 1B – West Taieri Plain above sea level

'Sources of flooding include the Taieri River to the east, the streams that drain the Maungatua Range to the north, and internal runoff and overland flow (ORC, 2013). The effects of flooding could be significant if Lower Taieri Flood Protection Scheme floodbanks were to fail (breach), or were overtopped by a flood event larger than their intended design. In such a situation, the velocity and depth of flood flows could damage buildings and other assets, move vehicles and make walking difficult or unsafe, and therefore present a possible risk to life. The consequences of a floodbank breach near Outram, in particular, would be significant, due to the potential impacts on this community.'

'Parts of Area 1B that are elevated relative to the surrounding land may still be isolated for extended periods, and/or be affected by low-level inundation.'

- [85] The Consulting Engineer notes that the site is flat, rural land on alluvial soils. No earthworks are applied for or anticipated as part of this proposal, and any earthworks associated with the development are unlikely to be significant as long as natural overland flow paths are not interrupted. The proposal will not create or exacerbate instabilities on this or adjacent properties. The seismic issues are not an impediment to development but a matter that will influence building design requirements.

- [86] MWH recommends the following standard advice:

Underlying soils have a potential for amplified movement and liquefaction during a significant seismic event. The cases for seismic loading are normally addressed at building control stage.

- *The Dunedin City Council Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1. 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.*
- *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.*
- *Confirm a minimum floor level to 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 landowners property.*
- *This proposed level 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.*
- *Normal building requirements exist to ensure that overland stormwater flows are not interrupted and the dwelling should be situated to avoid any adverse effects from local ponding during storm rainfall events.*

- [87] I visited the site on 22 July 2017 during the extreme rainfall event over 21 to 22 July. I noted that there was no obvious ponding of water on-site, and I have no reason to suppose that the site will have flooding issues because of rainfall. As the land is part of an area protected by the flood bank system, the Building Act 2004 requirements may be considered sufficient to address the residual risk of inundation. However, section 106 of the Resource Management Act 1991 does give a mandate for a greater level of protection (if it is considered appropriate) as a requirement of subdivision consent.

NES Matters

- [88] The application for the underlying subdivision of 99 Formby Street was submitted with a Preliminary Site Investigation (PSI), dated November 2015, as prepared by EC Otago Ltd. The report notes that the subject site has been used as a former market garden, and similarly, the Council's records show it to have been used for an activity on the hazardous activities and industries list (HAIL A10: market gardening). The market gardening use and the possible presence of bulk storage tanks for fuel (HAIL A17) have the potential to contaminate soils. As such, the applicant had soil sampling undertaken and a PSI was prepared for SUB-2017-33. The owner identified an underground storage tank site (UST) beside the existing three-bay shed on-site (within the subject site of this application), although this UST is no longer used and the Council records do not refer to this tank at all. An Ag-Chemical shed measuring 3.0m by 3.0m is situated on Lot 1 SUB-2017-33 (the present house of 99 Formby Street).
- [89] The soil sampling took nine samples across the subject site. Sample 1 targeted the UST site; Sample 2, the proposed house site of Lot 9; and Sample 3, Lot 5. There were also two composite samples; one over proposed Lot 9 and the second of the house sites along the Formby Street frontage. The samples were analysed for arsenic, mercury cadmium, and lead, and the full pesticide suite. The report states that there were no instances of any of the analytes approaching or exceeding the Rural-Residential + 25% food production (most conservative) criteria.
- [90] Council's Consulting Engineer, MWH, considered the PSI at the time of SUB-2017-33. He noted that, *'In none of the analysed soil samples did concentrations of analysed contaminants approach applicable Soil Guideline Values for the relevant future land use (correctly assessed by EC Otago as being "Rural residential with 25% produce consumption").'* MWH concluded:
- 'The PSI conducted by EC Otago on the 91 and 99 Formby St properties is thorough and fit for purpose. The conclusions are endorsed in this review, with particular note of the fact that further investigation of the underground fuel storage tank location is necessary in due course as the subdivision work proceeds on this land.'*
- [91] The Consulting Engineer considered the PSI again in respect of the more intensive subdivision of SUB-2017-43 and the proposed development of the new lots and 91 Formby Street in an email dated 7 August 2017. He notes that the sampling and analysis carried out at the time of the PSI is not at a level that a detailed site investigation would require, but it is clear the distribution of tested contaminants across 99 Formby Street is both uniform in terms of concentrations found. There were no apparent hot spots, and the levels are low. The concentrations found are well within the relevant Soil Contaminant Standards and Soil Guideline Values for the proposed land use. Although 91 Formby Street is in a different title, it was part of the same market gardening operation, and will have been treated identically to the land of 99 Formby Street as part of that business. The findings for 99 Formby Street are therefore applicable to 91 Formby Street as well. The Consulting Engineer comments:
- 'Nothing in what has been reported in the Environmental Consultants Otago PSI document suggests that there are any contamination risks involved in this 9-Lot subdivision proposal. There would be no particular consent conditions required regarding contamination - because the risks are negligible.'*
- [92] Accordingly, the subject sites are considered to be suitable for subdivision and the change of use, and no further testing or soil remediation is considered necessary. The Otago Regional Council did not comment on any potential soil contamination matters.

Building Platforms (18.6.1(h) and Bulk and Location (6.7.9)

- [93] The applicant has identified building platforms for 91 Formby Street and proposed Lot 9 of 99 Formby Street. The building platforms are shown as measuring 30m by 40m, and both are positioned more or less centrally within the Rural-zone portion of the sites. The purpose of the building platforms is to define a building area in a location where a dwelling would not otherwise be expected, and to allow a dwelling to be built within the yard spaces of 91 Formby Street.
- [94] The building platform of 91 Formby Street will be situated on the Rural-zoned land of the site although there is approximately 1000m² of Residential 5-zoned land at the street frontage where a house could be established in accordance with the zone expectations. The applicant, however, has identified a position approximately 100m from the road boundary as being a more desirable location for building. The reasons for choosing this position are not given in the application but it is noted that it will be to the rear of 87 Formby Street, will have a more rural outlook and plenty of space around the proposed house, and will maintain a reasonable distance from all the neighbours.
- [95] The proposed building site will be 30m from the southwest rear boundary, and 35m from the northern boundary. Both boundaries are shared with 85 Formby Street. The owners and occupiers of this property, plus those of 87 and 93 Formby Street, have provided affected party approval to the application, and accordingly, pursuant to section 104(3)(a)(ii) of the Resource Management Act 1991, the Council must not have regard to any effects on these parties. The only other adjacent neighbour to the southeast is 99 Formby Street which is part of this application. As such, none of the immediate neighbours has an issue with the position of the proposed house, including the proposed yard breaches. If the house were to be built on the Residential 5 zoned portion of this site, this would place it between the sites of 87 and 93 Formby Street, and the development would probably have greater effect on these two properties simply because the houses would be much closer together.
- [96] The house position for 91 Formby Street will be behind the house of 87 Formby Street. As such, it will be difficult to see from Formby Street. It will also be approximately 260m from the public viewpoint of Huntly Road. There are no neighbours directly across Formby Street to consider as this land is occupied by the rugby club. I therefore consider that the proposed building platform for 91 Formby Street will have less than minor adverse effects on the rural character and outlook in this location.
- [97] The building platform for proposed Lot 9 of 99 Formby Street is also situated mid-site on Rural-zoned land. In this case, there is very little Residential 5-zoned land within the proposed site and no scope to build on proposed Lot 9 without encroaching onto the rural land. The immediate neighbour to the west is 85 Formby Street, and the above affected party approval also applies to this building proposal. The one submitter who lives across Huntly Road from the subject site does not oppose the subdivision as such, but notes that they bought their property in part because of the rural outlook and all day sun. They have requested a height restriction on plantings along the Huntly Road boundary of the new lots, but have not commented specifically on the position of the proposed house site for Lot 9, or even Lot 1.
- [98] It appears that the proposed building platform position for Lot 9 does not raise any issues for the surrounding neighbours but it will be far more visible from the public viewpoint of Huntly Road. It will be screened from Formby Road by the new housing of proposed Lots 1 to 8.
- [99] The proposed house site of Lot 9 is positioned at the edge of Outram township, but the rural/urban divide is somewhat weak in this location. The land occupied by the rugby club is zoned Rural and will remain as open recreational land, but it is surrounded on

all sides by residential zoning. This is arranged in a strip along the southeast and southwest sides of Huntly Road and Formby Street, at the very outer edge of Outram. Progressing further southwest along Huntly Road into the Rural zone, there are a number of undersized rural properties with well-established houses. The proposed house site of Lot 9, therefore, is not necessarily out of character for the surrounding area, although it does contribute to further blurring of the zone boundaries.

- [100] If Lot 9 were to be developed with a residential dwelling, then the proposed building platform will provide a suitable building area. It will be of adequate size, and will maintain 40.0m yard spaces as is specified for the Rural zone by the District Plan. However, I note that the building platform has been promoted by the applicant and is not a Council requirement. It may be difficult for Council to enforce its position in the future should a new landowner seek to have the house in a different location. The proposed building platform does not address any geotechnical, hazard, or landscape issues. It is a means to address the planning implications of the applicant's choice to exclude any Residential 5-zoned land from Lot 9. It is outside all yard spaces and is not imposed to authorise a yard encroachment in a specific location. It does not seek to minimise reverse sensitivity issues. The question has to be asked whether or not the house position is a critical factor in Council deciding to grant consent, should that occur. And if a new owner sought to shift the house location, would Council be reasonable in preventing that outcome if there were no yard breaches arising and no difference in overall development density?
- [101] What the proposed building platform does achieve is to provide Council with some certainty on the effects of a new dwelling on Lot 9. I am of the view that a different position for the building platform would have few additional adverse effects provided it maintained a 40.0m yard space in terms of all neighbours and a 20.0m front yard space in respect of Huntly Road. In all locations, it will be behind the housing of Lot 1 to 8, and will be visible from Huntly Road. If the future house of Lot 9 is to be confined to the building platform, the consent notice registered on the new title for this purpose will have to be very specific in its reasons for requiring this to occur, or Council needs to accept that the building platform could be moved or even removed entirely (thereby negating all controls on the position of the future house).
- [102] There are no building platforms proposed for Lot 1 to 8, and the applicant intends that the houses will comply with the performance criteria of the Residential 5 zone. I disagree with the applicant that houses can be built as permitted activities on these new lots as all contain a portion of Rural-zoned land. As non-complying activities, the performance criteria of the District Plan do not strictly apply, so any restrictions on building (such as yards or height plane angles) will need to be specified by a condition of consent. I consider it appropriate to impose the performance criteria of the Residential 5 zone as these new lots will share many characteristics of the residential properties in Outram generally.

Residential Units (6.15.7) & High Class Soils (6.7.11).

- [103] Assessment Matter 6.7.15 of the District Plan directs Council to consider the effects of residential units in the Rural zone in terms of cumulative effects, potential conflict, the covering of soils by hard surfaces, the effects on neighbours' amenity and economic well-being, the effects on the open nature of the environment, and the degree to which the productive potential of the site and future sustainable use is compromised. The residential development of Lots 1 to 8 will have few effects on the development of the Rural zone because these houses will be situated predominantly on residential land, within residential-sized lots. The proposed dwellings of 91 Formby Street and Lot 9, however, are to be fully sited on rural land, on under-sized Rural-zoned properties.
- [104] The two additional houses in this location are unlikely to have adverse cumulative effects as there is already a blurring of the zones along this edge of Outram. Likewise, I do not consider that there will be significant issues with conflicting activities as there

is already an interface of residential and rural activities occurring in this location. There is no reason to suppose that the proposed houses will create issues between conflicting activities if the existing housing does not already have these issues.

- [105] The covering of soils with hard surfacing, and the degree to which the productive potential of the land is compromised, is a more significant issue. The subject sites are fully covered by high class soils and were until recently used for market gardening purposes. Four of the submitters oppose the application because of the loss of productive worth of the soils and farm land. While the residential development of the Residential 5-zoned portion of both lots is anticipated, neither the house site of 91 Formby Street nor that of proposed Lot 9 is expected.
- [106] The area of soils covered by hard surfacing is unlikely to be significant in terms of area. Basically, it will be confined to the roof areas of the houses and any accessory buildings, and will be a relatively small portion of the properties. The only other likely area of hard surfacing will be the driveway formations. As noted in the application, the 'relocation' of a dwelling from the Residential 5-zoned land to the Rural zoning will have little impact on the high class soil resource as the residential zoning contains the same soils. All that is happening is the house is being built in a different position.
- [107] This is not the case for proposed Lot 9 as there is no means of building on Lot 9 within the Residential 5 zone. The proposed house of Lot 9 is an additional covering of the high class soils over and above that anticipated for the subject site of 99 Formby Street.
- [108] In both cases, the proposed housing is to be situated centrally within the site. While there might be only a small portion of the soils covered by the buildings, the placement of the buildings will have significant effect on the ability to farm the balance of the lots. The impact is therefore greater than the size of the building platforms. I expect that should consent be granted, the two properties will become large residential properties, and the farming potential of the land will be effectively lost. This would not be the case if the houses were positioned at the Formby Road frontage on the residential zoning, if for no other reason than it would keep the body of each site as a sizable block of land which could be more readily cultivated. Economics might make the farming difficult to maintain, but this is not a matter Council can determine. However, it can be reasonably assumed the most efficient way of retaining productive potential would be for any dwelling to be close to the road. It is apparent that the subject sites have been separated from a larger farming operation. This was possible because of the existing title structure does not accurately reflect the size of the original property. In selling off the titles, however, the economies of scale in farming the land has been effectively lost. The establishment of housing on these sites in the positions proposed will further reduce any productive worth.
- [109] The proposed development is not expected to adversely affect the amenity and economic well-being of neighbouring properties. The immediately adjoining neighbours have all provided written consent to the proposal and Council must not have any regard to effects on these parties. The amenity of the open nature of the land will be compromised because the applicant intends that there be ten additional houses built at the edge of Outram on land which is currently open farm land. Eight of these houses are anticipated by the zoning along Formby Street, and a house could be built on 91 Formby Street on the same zoning. The actual house position on 91 Formby Street and the proposed house of Lot 9 is not expected, but their effects on open amenity will be already compromised and reduced by the existing housing on Formby Street and the proposed houses of Lots 1 to 8. The adverse effects are therefore less than they might appear. There will be significant change to the existing environment, but change in accordance with the zoning is generally not considered to be an adverse effect.

Landscape (6.7.25)

- [110] The subject site is not in a recognised landscape area, and therefore the Landscape Section of the District Plan is not relevant to this subdivision proposal. The Plan does not seek to control the position of buildings where permitted outside of landscape areas, nor the appearance or colour of the buildings. The general provisions of the Rural zone in respect of rural character and visual impact do apply, however, and need to be considered. The non-complying status of the application also enables wider consideration of effects.
- [111] Again, the proposed housing of Lots 1 to 8 needs to be considered separately from the proposed houses of 91 Formby Street and Lot 9. The housing of Lot 1 to 8 is to be sited on Residential 5-zoned land, and therefore, while there will be significant change along this undeveloped rural edge of Outram, the development is actually in accordance with the zoning. Any effects on the landscape are within expectations of the District Plan.
- [112] Having then established eight houses along Formby Street edge, the effects of the house of Lot 9 will be much reduced. For a start, it will be difficult or impossible to see from Formby Street because of the new housing. It will be visible from Huntly Road, and will have some adverse effects on the already rather limited rural views from this viewpoint. The roadside hedging and the backdrop of Outram township already impact on this view. Nevertheless, what is currently open rural space will become developed land.
- [113] The adverse effects on landscape of the proposed house of 91 Formby Street will be more limited because of its position behind the existing housing on Formby Street, the distance from Huntly Road, and the hedging around the north and west boundaries of the property. It will also be screened from Huntly Road by the house of Lot 9, should consent be granted. As such, I do not consider that the proposed house of 91 Formby Street will have significant adverse effects on the rural landscape in this location at the edge of Outram.

Transportation (6.7.24, 18.6.1(c), 8.13.7 & 20.6)

- [114] Council's Planner/Engineer Transport has considered the application. He notes that the sites of 91 and 99 Formby Street has frontage to Formby Street, and to Huntly Road. Proposed Lots 2 to 8 will front Formby Street, while Lots 1 and 9 will have frontage to both roads.
- [115] It is noted that Formby Street has a sealed carriageway approximately 6.0m wide in the vicinity of the subject sites, with metalled shoulders and roadside drainage features. There are no footpaths near the subject sites. The closest footpath on Formby Street is approximately 210m to the north of the subject site. The metalled shoulders therefore facilitate pedestrian movements along Formby Street.
- [116] Lots 1 to 8 are located substantially within the Residential 5 zone. Given that these lots occupy most of the Formby Street frontage of 99 Formby Street, the subdivision will have development contributions leveed. As such, Transport does not considered it necessary to require the applicant to construct a footpath adjacent to the front boundaries of the new lots as part of this subdivision. In principle, development contributions are obtained and allocated for such infrastructural improvements as set by the Council forward works programmes, though it is noted that there are currently no Formby Street improvements currently on the transport forward works programme.
- [117] Individual site access will be ascertained when there are specific development proposals for the future development on each of the new lots, and will be assessed at the time of either building consent or any further resource consent application required.

- [118] The traffic generated by the proposal is considered to have no more than minor adverse effects on the transportation network. Transport considers the proposal to be acceptable, and did not require any conditions of consent.

Archaeological Sites (8.13.16)

- [119] There are no known archaeological sites on the subject sites, and neither Kai Tahu ki Otago nor Heritage New Zealand has submitted on the application. It is therefore accepted that there is unlikely to be any pre-1900 archaeological sites affected by the proposed subdivision. However, should any archaeological material be uncovered during earthworks, the applicant will need to obtain an archaeological authority before continuing further. This matter is administered by Heritage New Zealand in accordance with the Heritage New Zealand Puhere Taonga Act 2014. An accidental discovery protocol should be included as either a condition or advice notice.

Earthworks (17.8)

- [120] As the subject sites are more or less level, it is unlikely that significant earthworks will be necessary in order to develop the sites, and no application has been made for earthworks associated with the proposed subdivision and development. Accordingly, this consent does not address any earthworks for this subdivision associated with the development of the new lots, or earthworks for the formation of any new access, manoeuvring areas, or retaining walls (should any be required). Should future earthworks on-site breach the performance standards of Section 17 of the District Plan, or the relevant rules of the Proposed Plan if in effect or operative, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

Physical Limitations (18.6.1(k))

- [121] Regarding the question as to whether or not the subdivision will produce lots having physical limitations rendering them unsuitable for future use, I note that Lots 1 to 8 will be at least 21.0m wide and 52.0m deep. From a purely practical view point, the proposed lots are each of suitable size and shape for a residential dwelling and curtilage. Proposed Lot 9 is much larger, providing much greater options for the siting of the proposed house. There are no geotechnical issues affecting this land and no known natural hazards which are expected to compromise the building potential of the new lots. The nature and extend of risks from flooding and seismic constraints are such that they can be addressed at the time of building consent. Modification of the land or restriction on location of buildings as part of the subdivision is not relevant in the circumstances of this proposal. Accordingly, there is no expectation that the proposed subdivision of 99 Formby Street will create any lot having physical limitations rendering it unsuitable for future use. Any limitations are introduced by the zoning of the land which does not allow houses to be built on-site as permitted activities.

Amenity Values (6.7.3 & 8.13.5)

- [123] The Resource Management Act 1991 defines 'amenity values' as:

"... those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"

- [124] The existing environment and character of an area largely determines the amenity values of any site, but amenity values are also expressed by the District Plan through the zoning provisions. In this case, the proposal is for the subdivision of an existing mixed-zoned site with less than 15.0ha of Rural-zoned land into nine mixed-zoned sites, and the development of all the new lots with residential units. In the case of 91

Formby Street, the site is an existing entity, and the proposal will establish a new dwelling on this site on the Rural-zoned portion of the property.

- [125] One house positioned next to Formby Street is anticipated for 91 Formby Street. When assessed next to the provisions of the District Plan, a house sited between the residential properties of 87 and 93 Formby Street (i.e. at the roadside) would be considered to have no adverse effects on the amenity values of the zone and area. The proposed position to the rear of 87 Formby Street is, however, sited on rural land, and the effects are not in accordance with the expectations of the District Plan. The effects are considered to be more significant although the neighbours might well feel that the effects are more acceptable than a house in much closer proximity at the roadside.
- [126] Given the limited visibility of the proposed house site on 91 Formby Street and the distances from other properties and public places, the effects on amenity will be largely confined to the subject site itself and the immediately adjacent neighbours. All the neighbours have provided affected party approval, and accordingly, the Council must not consider the effects on these parties. There will be very limited adverse effects on the wider community, most of whom will have limited awareness of a new house behind the property of 87 Formby Street.
- [127] The physical changes to the land of 99 Formby Street will be significant as there will be eight new dwellings constructed along the Formby Street frontage of the site as well as one new house behind. In fact, the zoning along Formby Street anticipates up to eight dwellings to be built at the roadside, so proposed Lots 1 to 8 (despite their mixed zoning) are largely in accordance with the expectations of the District Plan. The physical changes are therefore not considered to adversely affect the amenity values of the area although the changes in the public perception of the rural amenity could be substantial. I note that no submitters have opposed the application for reasons to do with rural amenity.
- [128] The house of proposed Lot 9 will be sited on an undersized Rural-zoned site, and will be readily visible from Huntly Road, but not Formby Street once the houses of Lots 1 to 8 are built. While I consider that the house will have quite an impact on rural amenity (the open rural block will become a large house site, in essence), this will be tempered by the proximity and impact of the new housing on Lots 1 to 8. There are also nearby houses on undersized Rural-zoned properties, so the additional house on Lot 9 will not be out of character for the area. It will, however, increase the density of development for the subject site by one house from the eight expected by the District Plan to a total of nine houses; the eight as anticipated by the Residential 5-zoned land plus one on Rural-zoned land that is not expected.
- [129] It is my view that the additional house on 99 Formby Street is less acceptable than the first eight. Ideally all the houses should be sited at the roadside on the residential land, but if a house site on the Rural zoning is preferred, then there should be one fewer house at the roadside. This is the justification for the development of 91 Formby Street; the house site available at the roadside is to be transferred to the rear of the property. The applicant does not seek to develop both the residential land and the rural land, yet this is the proposal for 99 Formby Street.
- [130] As noted above, the subdivision of a mixed-zoned site along the zone boundary is often acceptable to Council provided there is a viable land use for both lots. This is usually residential activity. If a house is to be sited on 91 Formby Street on the Rural-zoned land, then there is the risk of the Residential 5-zoned land being subdivided off and a house built on this land as a permitted activity. 91 Formby Street is not being subdivided, so there is no opportunity for Council to place a consent notice on the title preventing this from occurring.

- [131] To return to the subject of a house on Lot 9, it is my view that the same approach should be taken. Either the rural land is attached to one of the residential lots, or the building of a house on the centre of Lot 9 is off-set by the removal of one house along Formby Street. In summary, eight houses will maintain the density of development for this site as expected by the District Plan; the ninth house will intensify the residential development and encroach into the Rural zone. I consider these effects of this intensity of development to be unacceptable, or alternatively, if it is acceptable for the subdivision and development of 99 Formby Street, it is also acceptable for 91 Formby Street, and the Council can expect another subdivision and development proposal should consent be granted.

Conflict and Reverse Sensitivity (6.7.26)

- [132] The proposal will result in a total of ten new residential units at the urban/rural edge of Outram. The neighbouring activities are established residential use, farming, and the rugby club. Residential activity is an expected component of the Rural zone, and the proposed housing is not expected to create any conflict or reverse sensitivity issues in terms of the farming activities in the area. Likewise, any conflict arising from the proximity of the new housing to existing residential properties will be typical of neighbourly disputes anywhere rather than a direct consequence resulting from the actual nature of the neighbouring activities.
- [133] In regards to the rugby club across Formby Street from the subject sites, the grounds are situated behind mature hedging at the roadside. There will be limited, if any, visibility between the housing and the club grounds, and no direct interaction. The driveway entrance is directly opposite the frontage of 91 Formby Street, so a certain amount of conflicting traffic movements is to be expected. These will predominantly occur on Saturdays, practise nights, and at the time of any functions in the clubrooms. The house of 91 Formby Street is to be situated well back from the road, so it is unlikely that the rugby grounds traffic will have a direct impact on the residents themselves. I note that there are occasions when the parking area of the clubrooms is used for community events, and during the recent flooding of the Taieri (22 July), a number of stock trucks were parked there for unknown reasons. Therefore, the residents of the proposed housing should be aware that the grounds are a community resource and will be used when needed.
- [134] The Council's Parks and Recreation Officer, Parks and Recreation Services, as the administrator of the rugby grounds, has considered the application. He comments:

'My only concerns would be around access and egress from the reserve for recreation users. Although this will likely be addressed by DCC Transportation, given ample parking is provided on the reserve and the space does not experience heavy daily use, it is unlikely that the proposed subdivision and development will compromise user safety and the ability to access the reserve. I, therefore, do not consider the application as lodged will have any adverse effects that are more than minor on the adjacent reserve.'

- [135] Overall, it is my opinion that the proposed residential development of 91 and 99 Formby Street will not create conflict or give rise to any reverse sensitivity issues.

Cumulative Effects (6.7.4)

- [136] The nature of cumulative effects is defined in *Dye v Auckland Regional Council* [2002] 1 NZLR 337, as the " ... 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".

- [137] The District Plan directs the Council to consider the cumulative effects on amenity values, rural character, natural hazards, infrastructure, roading and traffic, and landscape. As discussed above, the proposed development is not expected to have adverse effects on amenity values except that the ninth house on 99 Formby Street will, in my opinion, create a cumulative effect on the rural amenity by increasing the density of development beyond that anticipated by the District Plan. It will also provide justification for the subdivision and further development of 91 Formby Street, thereby creating the risk that there will be even more housing than is promoted by this application. However, the Dye decision is clear that such a risk is a precedent issue to be considered under section 104(1)(c) and not an environmental effect.
- [138] The proposed subdivision and development of the subject sites is not expected to increase the risk of natural hazards in this location. The subject sites were not subject to surface flooding in the recent extreme rainfall event of July, and there are no known natural hazards affecting this land which will be intensified by the granting of consent
- [139] There are no cumulative effects on the Council's infrastructure. There is sufficient water available within the rural water scheme, and the Water and Waste Services Business Unit are prepared to provide water to all the housing should the Committee grant consent. There is no reticulated wastewater or stormwater servicing, and the new houses will have to be self-sufficient for servicing. There will be no cumulative effects on the Council's infrastructure.
- [140] The number of houses proposed for 91 and 99 Formby Street are in accordance with the zone expectations except for one additional house on 99 Formby Street. As such, the traffic generated by the residential activity of Lots 1 to 8 and the property of 91 Formby Street is consistent with the District Plan expectations. The development will not have cumulative effect on the use of the roading which is more than minor. The additional house of proposed Lot 9 will have limited additional effects on the road, and is unlikely to generate enough traffic to make the area unsafe or congested, especially in light of the existing rugby grounds and clubroom already operating in this location.

Sustainability (6.7.1)

- [141] 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.
- [142] It is my opinion that the proposed subdivision will have effects on the amenity values and character of this area which are no more than minor, given its position at the urban/rural edge of Outram and the present level of residential development in the area, except that the proposal will create one additional house over and above that anticipated by the District Plan for this land. This could have implications for the future development of 91 Formby Street as well (refer page 41 of this report). I do not consider the additional housing to be sustainable use of rural amenity and character.
- [143] The proposed development will be fully self-serviced except water supply is available for connection. The development will be sustainable use of the Council's service infrastructure, although I note that one submitted has opposed the application on the basis that there is no reticulated wastewater system for the houses to connect into. The Water and Waste Services Business Unit has not identified this as an issue for Outram.
- [144] The proposed subdivision will utilise existing roading and will not require the construction of any new roads. There will be eight to ten new driveways onto Formby Street and possibly one or two onto Huntly Road. The Transport department has not identified the new driveways as being of concern. On-site parking will be required for Lots 1 to 8, and there will be sufficient space on Lot 9 and 91 Formby Street for at

least one parking space each. The proposed development is considered to be sustainable use of the roading infrastructure.

- [145] The proposed housing will cover high class soils. This is to be expected on the Residential 5-zoned land but not on Rural-zoned land where there is less than 15.0ha of land. Accordingly, the proposed development of 91 Formby Street and Lot 9 will cover high class soils. Furthermore, the positions of the proposed housing will compromise the ability to farm the high class soils because the houses will be located centrally within the sites, and the impact will be far greater than the size of the houses would suggest. I do not consider that the development is sustainable use of the City's high class soils and productive worth of the land.
- [146] Overall, I am off the opinion that the proposed subdivision and development will be sustainable use of Dunedin's physical and natural resources except for the high class soils and productive worth. Much of the proposed development is consistent with the development anticipated by the zoning, but not with the proposed development of housing on the Rural-zoned portion of the land. The proposal will result in the loss of productive potential for this land, and will eventually reduce a former market garden to an entirely residential use at a density greater than anticipated by the Plan.

Summary

- [147] The proposed subdivision and residential development 91 and 99 Formby Street will have limited adverse effects as the density of development is largely anticipated by the zoning of the land. In the case of 91 Formby Street, the house site is being transferred onto the Rural-zoned portion of the property, in a location where a house would not normally be expected but where the effects are largely confined to the site itself and the adjoining neighbours. All surrounding neighbours have provided affected party approvals to the proposal, indicating that the effects are acceptable, and no one has submitted specifically on this proposal. However, the proposed development of Lot 9 will create an addition house site, and is not anticipated by the District Plan. While the house sites of Lot 9 and 91 Formby Street will have very few effects on the wider area, there will be significant impacts for the high class soils within the site and the productive worth of the land.

6. OBJECTIVES AND POLICIES ASSESSMENT (Section 104(1)(b))

- [148] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the Proposed Second Generation District Plan has been notified. At the time of writing this report, decisions on the Proposed Plan hearings have yet to be released. The objectives and policies of both Plans have been taken into account. The following section of the report assesses the proposal against the relevant objectives and policies of both plans.

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	It is my opinion that the proposed subdivision and development of the subject sites will, for the most part, maintain the amenity values of the zone except that there will be one house more than anticipated for 99 Formby Street. This has the potential to adversely affect rural amenity values. The proposal is considered to be inconsistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	

Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The new housing will be self-serviced except for water supply, and will utilise existing roading infrastructure. There is capacity within the reticulated rural water scheme to serve all the new dwellings. Accordingly, I consider that the proposed subdivision is consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	The natural and physical resource of high class soils and productive land is not protected by this development. Lots 1 to 8 are on residential land, and the covering of high class soils on this land it to anticipated. The house of 91 Formby Street is to be located on rural land rather than the residential land, and accordingly, there is no greater covering of high class soils occurring, but the position of the house, and that of proposed Lot 9, will effectively render the sites non-productive. The proposal is contrary to this objective and policy.
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The residential use of rural land is not considered to be incompatible with rural land use, and houses are an expected component of the Rural zone. In this case, the housing of Lot 9 and 91 Formby Street will mean that the rural land resource cannot be fully realised. The proposal is considered to be inconsistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	The proposal has been assessed using the protocol established between Kai Tahu ki Otago and the Dunedin City Council. The proposal is considered to be consistent with this objective and policy.
Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	

Rural/ Rural Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The proposed development of Lot 9 and 91 Formby Street does not maintain the ability of the land resource to meet the needs of future generations. The sites have high class soils and
Policy 6.3.1	Provide for activities based on the productive use of rural land.	

Policy 6.3.2	Sustain the productive capacity of the Rural zone by controlling the adverse effects of activities	have been used as market gardens. They have significant value as productive land, but the house sites will not only cover high class soils but will mean there is little productive capacity of the rest of the farm land. The proposal is considered to be contrary to this objective and these policies.
Policy 6.3.3	To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.	The proposal does not involve significant land fragmentation in that the subdivision of 99 Formby Street keeps the majority of the Rural zoned land in one title. However, the house proposed for this land is in breach of the density provisions, and it will be difficult to farm the land with the house in the position shown. The proposal is considered to be inconsistent with this policy.
Policy 6.3.10	Protect areas that contain 'high class soils', as shown on the District Plan Maps 75, 76, and 77, in a way which sustains the productive capacity of the land.	The proposed development does not sustain the productive capacity of the land. The proposal is considered to be contrary to this policy.
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The proposed subdivision and development of 99 Formby Street, and the proposed dwelling of 91 Formby Street, is considered to meet the amenity values and the character of the rural area. Lots 1 to 8 are on Residential 5-zoned land, and represent an anticipated change to the existing environment. Development on these lots should not be expected to maintain the amenity of the rural area. In the context of eight new houses at the roadside, the effects on rural amenity of a house on Lot 9 will be relatively minor except that it will increase the density of development over and above that anticipated for the zone. Lot 9 will be undersized, and will be one more house than is expected for 99 Formby Street. The predominance of natural features over human made features will be lost.
Policy 6.3.5	Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to: a) a predominance of natural features over human made features; b) high ratio of open space relative to the built environment; c) significant areas of vegetation in pasture, crops, forestry and indigenous vegetation; d) presence of large numbers of farmed animals; e) ... f) Low population densities relative to urban areas; g) Generally unsealed roads; h) Absence of urban infrastructure.	The building site of 91 Formby Street will be to the rear of the property in a position not easily seen from public viewpoints. The neighbours have all provided affected party approval to the proposed development. Overall, the proposal is considered to be inconsistent with the amenity values of the Rural zone because of the position of the housing on 91 Formby Street and Lot 9, and because of the level of density being greater than the zoning anticipates.
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	The proposed subdivision and development will sustainably manage the roading network and services infrastructure. No new roading is required and traffic generated by the additional houses is within the capacity of the existing roading and largely in accordance with the zoning. There will be no demand of urban services. Accordingly, the proposal is considered to be consistent with this objective and policy.
Policy 6.3.8	Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposals are considered to be consistent with this objective. The proposed residential activity is not expected to conflict with any of the adjoining rural activities.

Policy 6.3.9	Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and on-site effluent disposal.	The proposed houses can all be self-serviced although there is water supply available for connection. The proposal is considered to be consistent with this policy.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activity is an expected component in the Rural Zone, although not on such small sites. The issue is not so much whether the residential activity is inappropriate for the zone, but rather whether it is appropriate for this location, and at this density. It is my opinion that the development proposed for 99 Formby Street is not appropriate at this density, and therefore is inconsistent with this policy.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	The proposed development is not considered to introduce any conflicting activity which will compromise the rural amenity or the ability of the rural land to be used for productive purposes except on the subject sites themselves. The position of the proposed housing will effectively render the sites of 91 Formby Street and Lot 9 unable to be farmed. The proposal is considered to be contrary to this policy.
Policy 6.3.14	Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to: (a) amenity values. (b) rural character (c) natural hazards, (d) the provision of infrastructure, roading, traffic and safety, or (e)	It is my view that the subdivision and development of 91 and 99 Formby Street will have cumulative effects in terms of rural character which are less than minor except in regard to the retention of productive land. The proposal is considered to be inconsistent with this policy.

Residential

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is considered to be consistent with this objective and policy. The development of the Residential 5 portion of the subject sites is to be developed in accordance with the zone expectations. No development of the Residential 5-zoned land is planned for 91 Formby Street.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.7	Ensure that all development in unserviced residential areas makes adequate provision for the disposal of effluent on-site without having and adverse effects on the environment.	Outram has no reticulated wastewater services and all housing relies on septic tank. Proposed Lots 1 to 8 are considered to be of adequate size to accommodate a septic tank. Water and Waste Services Business Unit has not identified any concerns for the servicing of these lots. The proposal is considered to be consistent with this policy.
Objective 8.2.2	Ensure that activities do not adversely affect the special amenity values of rural townships and settlements.	The proposed development of the Residential 5-zoned portion of 99 Formby Street is considered to maintain the amenity values of Outram because the residential development is in accordance with the zone expectations. The development will not exceed the limitations of the urban service infrastructure. The proposal is considered to be consistent with this objective and policy.
Policy 8.3.6	Ensure that development in rural townships and settlements does not exceed the limitations of the urban service infrastructure.	
Policy 8.3.9	Recognise and retain views of rural surroundings from the urban areas, rural townships and settlements.	The proposal will place housing in a line along a road where it is currently possible to see across open rural land. The proposal is considered to be inconsistent with this policy.

Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	The proposal is considered to be consistent with this objective and policy. The proposal involves residential development in a residential area at a density permitted by the District Plan. There are no issues with the service infrastructure for this development. The proposal is not considered to have adverse effects on the management of Council's transportation infrastructure. This objective and policy is not relevant to the development on the Rural-zoned land.
Policy 8.3.4	Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	The subject site is recognised as being subject to a flooding risk although the recent flood event of 22 July did not result in any obvious surface flooding or cross-country overland flows. Provided house floor levels are at an appropriate height, the development of the land is not expected to be subject to adverse natural hazards. The proposal is expected to be consistent with this objective and policy.
Policy 17.3.3	Control development in areas prone to the effects of flooding.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	No earthworks have been applied for as part of this subdivision and land use proposal, but it is likely some earthworks will be required for building platforms and access formation. The subject sites are more or less level, and the future earthworks will not create or exacerbate land instability. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The proposal of 99 Formby Street seeks to subdivide a mixed-zoned site largely in accordance with its zoning. The residential lots will be arranged on the Residential 5 zoned land, and the majority of the Rural-zoned land will be contained within the one lot. However, Lot 9 is not large enough for a residential dwelling to be established without consent, it will have little Residential 5-zoned land, and will increase the density of development over and above that anticipated by the District Plan. Overall, the proposal is inconsistent to this objective and policy.
Policy 18.3.1	Avoid subdivisions that inhibit further subdivision activity and development.	
Policy 18.3.3	Allow the creation of special allotments that do not comply with the subdivision standards for special purposes.	There are no special allotments to be created.
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	There are no indications that this land is unsuitable for subdivision. This policy is concerned with process.
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The Water and Waste Services Business Unit has not identified any issues with the self-servicing the new lots. The proposal is

		considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	No physical limitations preventing subdivision or development have been identified for this land. The proposal is expected to be consistent with this objective.
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The land is quality productive land but the subject site is small and unlikely to be an economic farm unit in its own right. The proposed subdivision will not improve this situation. While the subdivision seeks to maintain the bulk of the Rural-zoned land within Lot 9, it will have no Residential 5 zoning in the same lot, and the proposed house will be sited centrally within the lot, thereby compromising further the potential farm use of the land. The proposal is considered to be contrary to this objective.
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	The subdivision consent application is being heard with the associated land use application for residential activity and technical breaches.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The proposed subdivision will not protect the natural and physical resource of the high class soils and the productive potential of the land. The proposal is considered to be contrary to this objective.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The proposed development will have little impact on the infrastructure as the houses will be self-serviced for wastewater and stormwater. There is sufficient capacity in the rural water scheme to supply all the houses. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	All residential development in Outram uses septic tanks for effluent disposal, much of it occurring on sites of 1000m ² . The Water and Waste Services Business Unit has not identified any concerns for servicing. The proposal is considered to be consistent with this policy.

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The proposed development of 91 and 99 Formby Street will create only one additional house to that reasonably expected by the zoning of the land. The traffic generation is therefore in accordance with the zoning except for one house. This is not considered to be a problem for the transportation network. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
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.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	

Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	
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Proposed Plan

The objectives and policies of the Proposed Plan must be considered alongside the objectives and policies of the current district plan. The following Proposed Plan objectives and policies are considered relevant to the proposal:

Strategic Directions

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 2.2.1	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.	The proposed subdivision is considered to manage the risk to the Outram community and the subject sites from natural hazards. The proposed residential activity for Lots 1 to 8 is not an inappropriate land use for this land, and a house should be expected on 91 Formby Street although not necessarily in the position proposed. No development of Lot 9 is anticipated. Overall, the risk to people, the community and property is considered to be low. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.1.1	Manage land use, development and subdivision based on: 1. the sensitivity of activities, by identifying them as: a sensitive activity, a potentially sensitive activity, or a least sensitive activity; 2. the risk from natural hazards to people, communities and property, considering both the likelihood and consequences of natural hazards, as shown in Table 11.1 in Section 11.	
Objective 2.2.2	Dunedin is well equipped to manage and adapt to any changes that may result from volatile energy markets or diminishing energy sources by having: 1. increased local electricity generation; 2. reduced reliance on private motor cars for transportation; and 3. increased capacity for local food production.	The proposal does not increase capacity for local food production as it takes land with high class soils in close proximity to Outram and uses it for residential activity. The siting of the proposed housing on the Rural-zoned land will effectively render the balance of the site unsuitable for cultivation. The proposed subdivision and development does not protect important high class soils and productive land from residential-oriented development. The development is not in accordance with the Rural zoning. The proposed subdivision creating Lot 9 is considered to be contrary with this objective and policy, while the development of 91 Formby Street in the position proposed is considered to be inconsistent with this objective and policy.
Policy 2.2.2.1	Identify areas important for food production and protect them from activities or subdivision (such as conversion to residential-oriented development) that may diminish food production capacity through: 1. use of zoning and rules that limit subdivision and residential activity, based on the nature and scale of productive rural activities in different parts of the rural environment; 2. consideration of rural productive values in identifying appropriate areas for urban expansion; and 3. identification of areas where high class soils are present (high class soils mapped area); and 4. use rules that require these soils to be retained on site.	
Objective 2.3.1	Land that is important for economic and social prosperity, including industrial areas, major facilities, key transportation routes and productive rural land, is protected from less productive competing uses or incompatible uses.	The proposal does not protect the rural productive land of the subject site from less productive use. The proposal is considered to be contrary with this objective in respect of 91 Formby Street and Lot 9.
Policy 2.3.1.2	Maintain or enhance the productivity of farming and other activities that support	

	the rural economy through: 1. rules that enable productive rural activities; 2. rules that provide for rural industry and other activities that support the rural economy; 3. zoning and rules that limit subdivision and residential activity based on the nature and scale of productive rural activities in different parts of the rural environment; 4. rules that restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika; 5. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential-oriented development; 6. rules that prevent the loss of high class soils; and 7. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location and support rural activity.	what the rules are meant to achieve, it is noted that the proposed subdivision does not enable productive rural activity, does not provide for rural industry, does not create sites which meet the nature and scale of productive rural activities, does not support productive rural activities, and leads to land fragmentation.
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Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	The new housing will utilise the existing roading network for access. The zoning along the edge of Formby Street is residential, and residential use of the road is therefore anticipated. The proposal will result in one house over and above the expected development for this land, and this should not have any adverse effects on the transportation network. The proposal is considered to be consistent with this objective.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	The proposal will require new accesses onto the road. The accesses will need to be formed to Council standard. The proposal is considered to be consistent with this policy.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development will not change the safety and efficiency of the transport network of Formby Street and the other streets in the area. There is no alterations being made to the transportation network except. The traffic generation will be only slightly greater than could be expected in light of the Residential 5 zoning along Formby Street. The proposal is considered to be consistent with this objective and policy.
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 6.2.3.9	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.	
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport	

	network.	
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Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The Water and Waste Services Business Unit has noted there is available capacity in the rural water scheme to serve all the new houses even though not all are within the water supply boundary. Although there is no reticulated wastewater or stormwater systems available for connection, this is the case for all of Outram. The self-servicing of the house sites is consistent with the approach taken for Outram. The proposal is considered to be consistent with this objective and policy.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposed development proposal is considered to maintain people's health and safety. There will be minimal effects on neighbours resulting from the proposed subdivision and new housing. The proposal is considered to be consistent with this objective and policies.
Policy 9.2.2.1	Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not possible, ensure any adverse effects would be insignificant.	
Policy 9.2.2.7	Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public infrastructure where the land use, development or the size and shape of resultant sites from a subdivision, ensure wastewater and stormwater can be disposed of in such a way that avoids adverse effects on the health of people on the site or on surrounding sites or, if avoidance is not possible, ensure any adverse effects would be insignificant.	There is no reticulated wastewater in Outram, and the District Plan requires a minimum site size of 1000m ² to allow for septic tank disposal. All the new lots will meet this requirement, and the Water and Waste Services Business Unit has not identified any concerns about the self-servicing of the house sites. The proposal is considered to be consistent with this policy.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	There are two fire-hydrants available for use for fire fighting. The proposal is considered to be consistent with this policy.

Natural Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 11.2.1	The risk from natural hazards, including climate change, is minimised, in the short to long term.	There is no reason to suppose that the proposed subdivision and development will increase the risk from natural hazards. The proposal is considered to be consistent with this objective.
Policy 11.2.1.12	In all hazard overlay zones, or in any other area that the DCC has good cause to suspect may be at risk from a natural	

	hazard (including but not limited to a geologically sensitive mapped area (GSA)), only allow earthworks - large scale or subdivision activities where the risk from natural hazards, including on any future land use or development, will be avoided, or no more than low.	the land. The subject sites are is almost level, and it is unlikely that the future earthworks will impact on surface flows of water. The risks are considered to be low. On the basis of known information, the proposal is considered to be consistent with these policies.
Policy 11.2.1.15	Only allow earthworks in a swale mapped area and earthworks - large scale in hazard (flood) overlay zones, where they will not: 1. obstruct or impede flood water, unless part of an approved natural hazard mitigation activity; and 2. create, exacerbate, or transfer risk from natural hazards.	

Residential zones

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 15.2.1	Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facilities, and commercial activities that support the day-to-day needs of residents.	The proposal involves residential activity in a residential area, at a density compliant with the District Plan expectations. The proposal is considered to be consistent with this objective.
Policy 15.2.1.1	Provide for a range of residential and community activities, where the effects of these activities can be managed in line with objectives 15.2.2, 15.2.3, 15.2.4, and 15.2.5 and their policies.	
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents	The development of the Residential 5-zoned portion of 99 Formby Street is considered to meet the expectations of the District Plan, and will be similar to the rest of the residential development of Outram. Lots 1 to 8 will all meet minimum lot size, and will allow a house to be built with a northwest/southeast aspect on each. The proposal is considered to be consistent with this objective and policy.
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	Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	Lots 1 to 8 have few residential neighbours, and none has submitted in opposition to the proposal. There are no development proposals for the new lots as yet, but all are of adequate size and shape to accommodate a fully complying residential dwelling. The proposal is considered to be consistent with this objective and policy.
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.	
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.	The proposed subdivision is consistent with the existing and proposed zoning of the Proposed Plan. Accordingly, the development will reflect the character of the zone although it will significantly change the streetscape of Formby Street in this location. There will be limited need for earthworks to develop the new lots, and it will be possible to build quality housing on these new lots. The proposal is considered
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.	

Policy 15.2.4.6	Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a) maintain the amenity of the streetscape b) reflect the current or future intended character of the neighbourhood; c) provide for development to occur without unreasonable earthworks or engineering requirements; and d) provide for quality housing.	to be consistent with this objective and policies.
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Rural Zones

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	The subdivision does not seek to reserve the Rural zone for productive rural activities. The subdivision will separate the bulk of the Rural-zoned land at 99 Formby Street from the Residential-5 zoned land and will establish a dwelling on the rural land. The housing is not associated with the rural productive worth of Lot 9. Likewise, the development of 91 Formby Street on the rural land does not support continued farming. Accordingly, the proposal is considered to be contrary with this objective.
Policy 16.2.1.5	Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	The proposal will create an undersized Rural site, although this is more or less the starting position in any case. What the subdivision does is separate the rural land from the residential land and does not preserve any development rights or expectations for Lot 9 in a manner that will maintain the potential for farming activity. The house of Lot 9 is not at the density which achieves the listed objectives. The proposal is considered to be contrary to this policy.
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	The proposal will establish a residential unit on Lot 9 which is undersized. There are no surplus dwellings on the subject site. The proposal is contrary to this policy.
Objective 16.2.2	The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: 1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised; 2. the residential character and amenity of adjoining residential zones is maintained; and 3. a reasonable level of amenity for residential activities in the rural zones.	The proposed development is not expected to create conflict with established activities. The proposal is considered to be consistent with this objective.
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The proposed building site for Lot 9 will maintain 40m yard spaces. The proposal is considered to be consistent with this policy.
Objective 16.2.3	The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features;	The proposed subdivision will intensify the density of development of this part of the Rural - Taieri zone to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to residential activity. The residential

	b) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c) buildings that are rural in nature, scale and design, such as barns and sheds; d) a low density of residential activity, which is associated with rural activities; e) a high proportion of land containing farmed animals, pasture, crops, and forestry; f) significant areas of indigenous vegetation and habitats for indigenous fauna; and g) other elements as described in the character descriptions of each rural zone located in Appendix A7.	activity of Lot 9 is not associated with rural activity, and its position will affect the ability to farm the land. The proposal is considered to be inconsistent with this objective.
Policy 16.2.3.1	Require buildings, structures and network utilities to be set back from boundaries and identified ridgelines, and of a height that maintains the rural character values and visual amenity of the rural zones.	The proposed building platform for Lot 9 is well set back from the roadside boundary of Huntly Road and will be screened from view of Formby Street by Lots 1 to 8. The development of Lot 9 is not at a density which maintains the rural character of the rural zones. The proposal is considered to be inconsistent with this objective and policy.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	
Policy 16.2.3.8	Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.	The subdivision is not considered to maintain or enhance the rural character and visual amenity of the zone. The proposal is inconsistent to this policy.

- [149] As the Proposed Plan is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan.
- [150] It is my view that the proposal is consistent with many of the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, natural hazards, residential, conflict and reverse sensitivity, and transportation. However, it is inconsistent with those relating to rural amenity and the mixing of land uses. In particular, it is considered to be contrary to rural productive worth, sustainability, and the protection of high class soils. It is considered to be contrary to the direction given for subdivision of rural land and the preservation of rural land use in the Proposed Plan objectives and policies.

Assessment of Regional Policy Statement and Plans

- [151] 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. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. 26 notices of appeal were then received and the parties are now in the mediation period. Any issues not resolved through mediation will become the subject of an Environment Court hearing.
- [152] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 11: Natural Hazards. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:

- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.2: Economic wellbeing.
- Policy 1.1.3 Social and cultural wellbeing and health and safety.
- Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
- Policy 3.1.7: Soil values.
- Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way.
- Policy 4.3.1: Managing infrastructure activities.
- Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity.
- Policy 5.2.1: Recognising historic heritage.
- Policy 5.2.2 Identifying historic heritage.
- Policy 5.2.3: Managing historic heritage.
- Objective 5.3: Sufficient land is managed and protected for economic production;
- Policy 5.3.1: Rural activities.

[153] The proposal is considered to be inconsistent with the following objectives and policies of the Proposed Regional Policy Statement.

- Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.

7. DECISION MAKING FRAMEWORK

Part II Matters

[154] Given there is no ambiguity, incompleteness or illegality in the operative Dunedin City District Plan, it may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below, and in my opinion, there is inconsistency or a degree of conflict with Part II stemming from the proposed development of the Rural-zoned land.

[155] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:

- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
- 5(2)(b) "Safeguarding the life-supporting capacity of air, water soil and ecosystems;
- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",
- 7(b) "The efficient use and development of natural and physical resources";
- 7(c) "The maintenance and enhancement of amenity values";
- 7(f) "Maintenance and enhancement of the quality of the environment"; and
- 7(g) "Any finite characteristics of natural and physical resources".

[156] With regard to Section 5(2)(a), it is considered that the proposed subdivision and residential development of Lots 1 to 8 will sustain the residential land resource, and is development more or less in accordance with the zone expectations. The development of 91 Formby Street will maintain the density of development at one house for the site,

albeit that the house will not be on residential land, and will compromise the ability of the property owner to actively farm the rural land. The development of proposed Lot 9 is not considered to sustain the potential of natural and physical land resource because there is no expectation that this land will be developed.

- [157] With regard to Section 5(2)(b), it is considered that the proposed subdivision to create Lot 9 will not safeguard the life-supporting capacity of the high class soils. The position of the house, and that of 91 Formby Street, will mean that there are high class soils covered by residential buildings, and there will be less opportunity to manage the balance of the sites as productive land.
- [158] With regard to Section 5(2)(c), it is considered that the proposed subdivision will have minimal adverse effects on the landscape and the rural environment. The most significant changes to the subject sites will be along the Formby Street road frontage where the land is zoned residential and residential development is anticipated. As such, it will be more difficult to see the proposed house of Lot 9, and the proposed house of 91 Formby Street will be situated to the rear of existing housing.
- [159] With regard to Section 7(b), it is considered that the proposed subdivision will not be the efficient use and development of the high class soils and rural productive land. While development of the Residential 5-zoned land should be expected, the development of proposed Lot 9 is not anticipated by the District Plan, and the development of 91 Formby Street should, ideally, be situated on the residential zoning.
- [160] With regard to Section 7(c), it is considered that the proposed subdivision of 99 Formby Street is largely in accordance with the expectations of the District Plan for the Residential 5-zoned land, and will therefore maintain the amenity values of that zone. The new housing of 91 Formby Street and Lot 9 will be on Rural-zoned land, but will have limited impact on the rural amenity values because both houses will be difficult to see from public viewpoints except Huntly Road, and then only over some distance.
- [161] With regard to Section 7(f), it is considered that the proposed subdivision will change the quality of the environment but the subdivision and development of Lots 1 to 8 is largely in accordance with the zone expectations. The development of Lot 9 will introduce housing in a location and at a density which does not reflect the zoning, and will adversely affect the rural environment.
- [162] With regard to Section 7(g), it is considered that the high class soils are not being respected by the proposed development of Lot 9 which will make its cultivation difficult and less economic. The same is true of the development of 91 Formby Street, but a dwelling is expected on this site, and regardless of its location, it will impact on the high class soils.

Section 104

- [163] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment of the creation and development of Lots 1 to 8 will have no more than minor effects. However, the development of Lot 9 will have more than minor adverse effects on the high class soils and rural productivity of the Rural-zoned land. The development of 91 Formby Street will also have similar adverse effects, but a house is expected on this site albeit not in the location proposed.
- [164] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the subdivision is considered to be generally consistent with most of the relevant objectives and policies of both the District Plan and Proposed Plan, except where inconsistent with amenity and the mixing of land uses. The development of Lot 9 and, to a certain extent, 91

Formby Street, however, is considered to be contrary to rural productive worth, sustainability, and the protection of high class soils.

- [165] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [152] and [153] of this report it was concluded that the application is consistent with the bulk of the relevant objectives and policies of the Regional Policy Statement for Otago, but inconsistent with those to do with the protection and management of high class soils.

- [166] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

- [167] Another matter relevant to the Committee is the consistent administration and interpretation of the District Plan. Further, the application is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.

- [168] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:

"...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan."

- [169] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an 'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

"If the granting of one consent was likely to cause a proliferation of like consents and if the ultimate result would be destructive of the physical resources and of people and communities by reason of causing unnecessary loadings on services or perhaps by reason of causing under-utilisation of areas where services etc. have been provided to accommodate such activities, then the Council may well be able to refuse an application having regard to that potential cumulative effect."

- [170] These matters have been considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC* (C92/2003) has demonstrated that when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council will apply the 'true exception test'.

- [171] In paragraph 11 of the decision Judge Smith stated "... we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique." This was added to in paragraph 20 where the Judge stated, "... therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone."

- [172] More recently, the matter of Plan integrity was considered in the Environment Court case *Berry v Gisborne District Council* (C71/2010), which offered the following comment:

"Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined."

- [173] The Committee should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current subdivision proposal in this regard. If the Committee deems there to be a real threat from this type of proposal being approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can be avoided. However, *Mason Heights Property Trust v Auckland Council* (C175/2011) noted that the true exception test is not mandatory:

"The Court has frequently looked at whether the proposal constitutes a true exception to the Plan. This test is not mandatory, but can assist the Court in assessing whether issues of precedent are likely to arise and whether the proposal meets the objectives and policies of the Plan by an alternative method."

- [174] The application considers that the proposal meets both branches of the section 104D test, and as such, the application of a true exception test is 'not entirely appropriate'. However, the applicant states that the sites are unique because of their split zoning and the proposed density of development being more or less compliant and consistent with the surrounding environment.
- [175] Split zoning is not an unusual situation as there are many split-zoned sites in Dunedin. Where the development is in accordance with the zone on which it stands, the Council is normally relaxed about the development of such land even though the rules of the more stringent zoning are taken into account. In this case, Lots 1 to 8 are more or less in accordance with the Residential 5 zoning and are therefore anticipated by the District Plan. The small sections of Rural-zoned land also included in Lots 1 to 8 complicates the planning situation slightly, but overall, a line of eight houses along the Formby Street frontage is expected and the subdivision and development of Lots 1 to 8 does not need to provide a true exception argument, in my opinion, for it to proceed.
- [176] Lot 9 is an undersized Rural-zoned site with only a small portion of Residential 5 land within its leg-in. The development of such land with a residential dwelling is not anticipated, and the granting of consent does, in my opinion, present the risk of creating an undesirable precedent. In this case, the rural land is not only being separated from the residential land, but the subdivision is removing any expectation that a house can be established on the new site. If the rural land were to be held with one of Lots 1 to 8, a house site would be all but guaranteed, and the density of development for the subject site (taking into account both rural and residential zones) would be maintained in accordance with the District Plan expectations. This would result in a more acceptable outcome which presents a far lesser challenge the District Plan, even if the house site were to be established on the Rural-zoned land as is proposed for 91 Formby Street.
- [177] 91 Formby Street also has mixed zoning. The applicant seeks to transfer the development 'rights' of one house from the Residential 5-zoned land to the Rural-zoned land. If the creation and development of proposed Lot 9 is to proceed, then there is every expectation that the Residential 5-zoned land of 91 Formby Street could be subdivided off and another house built on the new lot, making a total of two new

houses for 91 Formby Street. The precedent would have been set by the subdivision of 99 Formby Street.

- [178] I am not satisfied that there is anything truly exceptional or unusual about proposed Lot 9 which would allow its creation and development to proceed without running the risk of compromising the District Plan, and potentially the Proposed Plan. I do not consider that this rural property, or its location at the edge of a rural township, is sufficiently unusual enough for Council to be confident that other rural property owners would not also have the expectation of being able to subdivide in a like manner.

Non complying status (s104D)

- [179] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.
- [180] It is my opinion that the subdivision and development of Lots 1 to 8 will have adverse effects which are no more than minor. The creation of the new undersized Rural-zoned site and the building of a new house in the centre of the rural land will, in my opinion, have adverse effects on high class soils and rural productivity which are more than minor. The same is true for the proposed development of 91 Formby Street, but a house on this existing site is anticipated, and the actual position of the house is less crucial. The effects of the proposed house on 91 Formby Street are considered to be less than minor overall.
- [181] In respect of the objectives and policies of both Plans, the situation is again defined by the different circumstances. Lots 1 to 8 are considered to be consistent with most of the objectives and policies. However, the creation and development of Lot 9, and the development of 91 Formby Street on the rural land, is contrary to key objectives and policies regarding high class soils and rural productivity.
- [182] Overall, I consider that the creation and development of Lots 1 to 8 meet both tests of section 104D, and the Committee is able to consider the granting of consent sought in part. The creation and development of Lot 9 does not meet either test, in my opinion, and I do not consider that the Committee can consider the granting of consent. This land should be held as part of one of Lots 1 to 8. The development of 91 Formby Street will have effects which are no more than minor, and the proposal is not considered to be contrary to the objectives and policies. The Committee is able to consider the granting of consent for the development of 91 Formby Street.

8. RECOMMENDATION

Subdivision SUB-2017-43

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan and Proposed Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants in part** consent to the **non-complying** activity being the subdivision of the land subject to the NES legally described as Lot 2 SUB-2017-33 (currently part of Part Section 1 Block V West Taieri Survey District (CFR OT264/53 Ltd)) at 99 Formby Street, Outram, into a total of eight lots.

Land Use LUC-2017-222

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants** consent to a

non-complying activity for the establishment of residential activity on the land legally described as Lot 2 DP 7816 (CFR OT370/243) at 91 Formby Street, Outram.

Land Use LUC-2017-223

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants in part** consent to a **non-complying** activity for the establishment of residential activity on Lots 1 to 8 SUB-2017-43 at 99 Formby Street, Outram.

I have recommended conditions for consent as Appendix 1 of this report.

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the development of **91 Formby Street** will be no more than minor for the following reasons:
 - a) The subject site has enough Residential 5-zoned land within the title for a house to be established on-site without challenging the provisions of the District Plan. The proposal therefore does not seek to increase the density of development of this site over and above that anticipated by the District Plan, although the placement of the house is shown as being on Rural-zoned land.
 - b) The Residential 5 zoning of the site is comprised of high class soils, but the development of this land should be expected. To develop a house elsewhere on-site instead, also on high class soils, does not result in a greater reduction of productive land. The proposed building site of 91 Formby Street might not be ideal in terms of maintaining the productive worth of the property, but overall, there same area of farm land will be available regardless of whether the house is sited in the middle of the site or at the roadside.
 - c) The immediate neighbours have all provided affected party approvals to the proposed house site, and the Council must not have regard to any effects on these parties. Accordingly, it is accepted that the proposed house site (including its potential yard breaches) will have no adverse effects on the adjoining properties.
 - d) The proposed house site is situated to the rear of 87 Formby Street in a position where it will be difficult to see from Formby Street or any other public viewpoint. It is screened to the north and west by hedging. Accordingly, the placement of a house in this position will have very limited visual effects or consequences for the rural amenity of the area.
 - e) There is sufficient area within the site for the new house to be fully self-serviced without creating any issues. Reticulated water supply will be available.
2. The mixed zoning is not a true-exception in my opinion, but does lead to the expectation that a house can be developed on this site. Provided it is clear that the residential land is not to be subdivided or further developed in the future, the development of a house in a different position on-site is not considered to create an adverse precedent or challenge the District Plan.
3. The proposal is inconsistent with the objectives and policies of both Plans in respect of the high class soils and protection of productive worth, but consistent with most of the other relevant objectives and policies.

4. Overall, it is considered that the proposal meets both branches of the Section 104D test of the Act. Accordingly, the Committee is able to consider granting consent.
5. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of **99 Formby Street** into a maximum of eight lots will be no more than minor for the following reasons:
 - a) The subject site has enough Residential 5-zoned land within the title for eight new dwellings to be built without challenging the provisions of the District Plan. Therefore, eight new lots, each having 1000m² or so of Residential 5-zoned land is expected. I consider that the Rural-zoned land should be held as a single entity, and be held with one of the eight residential sites, thereby providing a building site for the rural land and ensuring its on-going availability as a rural productive block.
 - b) There is sufficient water supply available for the houses all to connect to the rural water scheme. There is no reticulated stormwater or wastewater drainage available for connection, but the new lots will be large enough to accommodate a septic tank. The proposed subdivision will not adversely affect the Council's infrastructure.
 - c) A line of housing at the Formby Street roadside will bring significant change to the area but the visual effects and change in character are acceptable in light of the residential zoning at the roadside. None of the submitters have commented on the proposed residential development along Formby Street.
6. Provided residential housing is confined to the residentially zoned land, there is no need for a true exception argument as the residential development along Formby Street is in accordance with the expectations of the District Plan. There is no challenge to the integrity of the District Plan occurring.
7. The creation and development of eight houses along the Formby Street frontage of the subject site is considered to have effects which are no more than minor, and is consistent with the objectives and policies of both Plans. The proposal will meet both branches of the section 104D test.
8. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of proposed **Lot 9** will be more than minor for the following reasons:
 - a) The new lot will be an undersized Rural-zoned site created by separating the rural zoning from all the Residential 5-zoned land. As such, there is no expectation that a residential dwelling can be built on this site. The establishment of a dwelling on this lot will increase the density of development to a level which is not anticipated by the District Plan, and which will compromise the rural character of the area.
 - b) The new dwelling will be sited on high class soils. Not only will it remove high class soils from productive use but the position of the proposed house in the middle of the site will reduce the ability for the rest of the land to be cultivated. The proposal will have significant adverse effects on the productive worth of the farmland.
 - c) The proposed house will be visible from the public viewpoint of Huntly Road. This is not necessarily an adverse effect as it will be viewed in the context on the new housing of Lots 1 to 8, and will be sited a reasonable distance from the roadside. However, it will have some impact on the rural amenity and openness of the Rural-zone in this location.

9. There is no true exception argument for this proposal, and the granting of consent for the creation of a new undersized Rural-zoned site runs the risk of setting an undesirable precedent where other property owners of mixed zoned sites could expect to subdivide and develop their land in a like manner.
10. The proposal is considered to have adverse effects on rural productivity and high class soils which are more than minor, and it will be contrary to the objectives and policies of both Plans in respect of the same matters. The proposal does not meet either test of section 104D, and the Committee is not in a position to consider the granting of consent.

Report prepared by:

Report checked by:



Lianne Darby
Planner



Campbell Thomson
Senior Planner



Date



Date

Should the Committee be of a mind to grant consent, I recommend the following conditions for consent:

DRAFT RECOMMENDED CONDITIONS: Subject to change.

SUB-2017-43

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 7816 & Pt Sec 1 Blk V West Taieri SD,' and the accompanying information submitted as part of SUB-2017-43 received by Council on 17 May 2017, except where modified by the following:*
2. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.*
 - b) *There shall be no Lot 9. The land of Lot 9 shall be held in its entirety with one of Lots 1 to 8 to create a site of approximately 2.7ha.*
3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *An "application for Water Supply - New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to Lots 1 to 8, 17, 18, 24 and 25. Details of how each unserviced lot is to be serviced for water shall accompany the application.*
 - b) *Upon approval by Water and Waste Services Business Unit, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*
 - c) *That a consent notice shall be prepared for registration on the titles of the lots fronting Huntly Road for the following on-going condition:*

'All vegetation within 5.0m of the Huntly Road frontage boundary of this site shall have a mature height no greater than 2.0m in order to prevent shading of Huntly Road.'
 - d) *That a consent notice shall be prepared for the lot containing the bulk of the Rural-zoned land for the following on-going condition:*

'The residential dwelling for this site shall be located on the Residential 5-zoned land at the edge of Formby Road in order to maintain the productive potential of the Rural-zoned land.'

'The Residential-5 zoned land of this site shall not be subdivided from the Rural-zoned land.'

Land Use LUC-2017-223

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 7816 & Pt Sec 1 Blk V West Taieri SD,' and the accompanying information submitted as part of LUC-2017-223 received by Council on 17 May 2017, except where modified by the following:*

1. *That only one residential unit shall be established on each of Lots 1 to 8.*
2. *That the residential unit of the site containing approximately 2.7ha shall be sited at the Formby Street roadside on Residential 5-zoned land.*
3. *That the residential activity of Lots 1 to 8 shall comply with the performance criteria of the Residential 5 zone as listed in Rule 8.11.2 of the District Plan unless further resource consent is obtained.*

Land Use LUC-2017-222

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 7816 & Pt Sec 1 Blk V West Taieri SD,' and the accompanying information submitted as part of LUC-2017-222 received by Council on 17 May 2017, except where modified by the following:*
2. *That only one residential unit shall be established on 91 Formby Street in the location of the building platform.*
3. *The residential dwelling and all residential accessory buildings shall be fully contained within the building platform as shown on the application plan.*
4. *That the residential dwelling shall have a maximum height of 10.0m.*
5. *That an "application for Water Supply - New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to the new house. Details of how the house is to be serviced for water shall accompany the application.*
6. *Upon approval by Water and Waste Services Business Unit, the water service connection shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*
7. *That the consent holder shall enter into a covenant with the Dunedin City Council restricting the subdivision of the Residential-5 zoned land within this site from the Rural-zoned land. There shall be no additional residential development of the Residential 5-zoned land.*