
TO: Hearings Committee

FROM: Jeremy Grey, Planner

DATE: 22 January 2018

SUBJECT: **LAND USE CONSENT APPLICATIONS**
LUC-2017-401 AND LUC-2017-402
1069 AND 1075 HIGHCLIFF ROAD
PUKEHIKI

INTRODUCTION

- [1] This report has been prepared on the basis of information provided in the application received on 21 July 2017, along with submissions and technical comments from Council representatives. 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 applications using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

BACKGROUND TO THE PROPOSAL

- [2] The land at 1069 and 1075 Highcliff Road is legally described as Lot 2 DP 306650 (Computer Freehold Register (CFR) 25979) and Lot 1 349575 (CFR 203124), respectively. It should be noted that the land comprised in these CFRs shares a common boundary and there is an easement to take and convey water identified on CFR 25979. Lot 1 DP 349575 has an area of approximately 11.3 hectares (ha), while Lot 2 DP 306650 has an area of approximately 8.3ha. Lot 1 DP 349575 was created via subdivision consent RMA-2005-0071 (renumbered as RMA-2005-368699), issued on 8 February 2005, and was separated from a 55ha balance area. This balance area is located to the south of Highcliff Road.
- [3] A condition was included on the subdivision consent, pursuant to section 220(2)(a) of the Act, requiring the imposition of a covenant (6470757.2) on the CFRs mentioned above, subject to section 240 of the Act. The covenant required that Lot 1 DP 349575 (1075 Highcliff Road) shall not be transferred, leased or otherwise disposed of except in conjunction with Lot 2 DP 306650 (1069 Highcliff Road). The covenant allowed for a total combined area between 1069 and 1075 Highcliff Road of 19.6ha and was offered by the applicant (JS Morris) as a condition of the subdivision consent. This afforded the Council the comfort to assess and grant the subdivision consent on a non-notified basis. This is because any resulting site would be greater than the minimum site size of 15ha, required by the then Proposed Dunedin City District Plan.
- [4] Land use consent application LUC-2016-481 was then applied for on 10 October 2016 for the establishment of a residential unit on the land referred to as 1069 Highcliff Road, incorporating a proposed dwelling and shed. The application was publicly notified on 29 October 2016, and a hearing was subsequently held on 17 March 2017. Following the adjournment of the hearing, it was realised that both of the subject CFRs were held together and could not be separated without the cancellation of the covenant. As a result, no land use consent was issued, given that the discovery of the

covenant altered the basis on which the application had been applied for and had been assessed in the section 42A report for the hearing. The outcome of the application was set out in minutes from the Hearing Commissioner, dated 24 March and 19 April 2017.

DESCRIPTION OF THE PROPOSAL

- [5] Land use consents are now sought to establish residential activity on land referred to as 1069 Highcliff Road (LUC-2017-401) and to authorise the continuation of the existing residential activity (LUC-2017-402) on land referred to as 1075 Highcliff Road. The application is included as Appendix A, attached to this report. The proposal is a re-submission of Land Use Consent Application LUC-2016-481, with a number of amendments. As such, almost all of the detail presented in the previous application remains unchanged. The proposal is intended to facilitate the separate ownership of the land encompassing 1069 and 1075 Highcliff Road by its two co-owners and, as such, includes an application to cancel the covenant holding the CFRs together (Application S240-2017-1).

- [6] The proposed dwelling is to measure approximately 19m by 7m (133m²) wide and will be 3.75m in height. The application notes that materials and associated colours will be chosen so as to be sympathetic to the surrounding environment. Cladding will encompass Coloursteel, along with cedar and cement weatherboard. It is understood that unpainted timber will be stained with a dark colour and that any painted finishes will have reflectivity values not exceeding 15%. The proposed dwelling is to be of an elongated design, with a low profile as depicted in the application.

- [7] To accommodate the dwelling, some earthworks will be required. This will involve the excavation of a building platform, measuring approximately 30m by 17m. It is understood that some retaining structures may be required, although none will exceed 1.2m in height. Otherwise, batter slopes are to be constructed as depicted in the application and will be planted. The plans provided with the application indicate that the maximum change in ground level is to be approximately 2.5m. Access to the dwelling is to be via the extension of an existing access track, which will also require some excavation. The applicant has advised that the volume of earthworks required to form the building platform and access track extension could be in the order 650m³-700m³.

- [8] The applicant also proposes to establish a farm shed. The shed is to measure approximately 17m by 6m (102m²) and will be approximately 4m in height. The shed is to be finished in appropriately sympathetic colours with low reflectivity. An indicative design is included with the application. It is understood that some minor earthworks will be required to form a platform for this building, however, specific details are not available at this time.

- [9] It is noted that the application indicates respective side boundary set-backs for the proposed dwelling and shed of approximately 12m and 11m, relative to the existing internal boundary between the two CFRs. Otherwise, the dwelling is to be approximately 160m from the northeastern and northwestern common boundaries at its closest points. The proposed dwelling would also be approximately 200m from the front boundary with Highcliff Road. The Rural zone rules of the operative District Plan require side boundary set-backs of 40m and 6m, with regard to dwellings and sheds (that do not house animals), respectively. All buildings are required to be at least 20m from a road boundary. The existing dwelling on 1075 Highcliff Road is approximately 20m from the existing internal boundary between the two CFRs and approximately 30m from the front boundary with Highcliff Road. An accessory building is located behind the dwelling, further away from cadastral boundaries. The proposed shed will be approximately 30m from both the existing dwelling and front boundary with Highcliff Road. It should be noted that the land encompassing 1075 Highcliff Road also contains four sheds located to the south of the dwelling that are at least 20m from the front boundary with Highcliff Road.

- [8] The application includes a plan entitled Development Concept Plan which details the siting of the dwelling and shed, and the landscaping layout. A driveway will traverse the lower portion of the site which will be located immediately upslope of existing vegetation. Additional landscape planting comprising mostly native species is to be carried out around the proposed buildings and along the riparian margins of a small watercourse running through the site.
- [9] A Landscape Assessment by Mike Moore and a Geotechnical Assessment by Jon Lindqvist are also provided with the application.

DESCRIPTION OF SITE AND LOCATION

- [10] As the subject CFRs are held together by way of a covenant, the land encompassed by these titles is considered one site and is thus referred to in this report as the subject site. The subject site occupies the lower south-west slope of Peggy's Hill and is located east of, and adjacent to, the Pukehiki settlement. The Pukehiki settlement is zoned Residential 5 in the operative District Plan. The northern slope of the property contains a 1.79ha Area of Significant Conservation Value (ASCV), identified by the operative District Plan as the Peggy's Hill Conservation Covenant (C065). This ASCV comprises a stand of remnant vegetation dominated by stunted podocarp species. A gully and watercourse forming part of the Robertson Creek catchment bisects the property towards Boulder Beach.
- [11] As highlighted in the application, there are several Rural-zoned sites in the vicinity of the subject site that are less than 15ha.

ACTIVITY STATUS

- [12] 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.
- [13] The relevant rules of the two district plans for this application are as follows:

Operative Dunedin City District Plan.
- [14] The subject site is zoned Rural in the Dunedin City District Plan. The majority of site is within the Peninsula Coast Outstanding Landscape Area (PCOLA), while the northern portion of that part of the site located at 1069 Highcliff Road is located within the Northwest Peninsula Landscape Conservation Area (NPLCA). However, the proposed buildings are located entirely within the PCOLA. The Council's Hazards Register shows the western edge of the subject site to be subject to hazards relating to land stability (Hazard IDs 10127 and 11407). A further hazard (Hazard ID 11504) relates to a former landslide, located some distance to the north of the proposed building platform. A relatively large portion of the land at 1075 Highcliff Road is identified as containing high class soils, while a very small portion of 1069 Highcliff Road also contains high class soils.
- [15] Land use consent for a non-complying activity pursuant to Rule 6.5.7(i) of the District Plan is required to authorise both the proposed and existing residential activities on the site, given that, once separated, they will each be less than 15ha in area. While the permitted activity standards of Rule 6.5.3 only serve as a guide as to appropriate development in respect of non-complying activities, it is important to note that neither the existing dwelling nor that proposed dwelling will satisfy the 40m side yard setback ordinarily required within the zone. However, the proposed farm shed does satisfy the relevant set-backs, making it a permitted activity within the Rural zone, if it is accessory to farming activity. Some clarification from the applicant of the farming

activity existing or to be carried out would be beneficial to understanding the full extent of permitted activity relevant to this application.

- [16] The application seeks to establish a dwelling and shed within the PCOLA. In absence of a Landscape Building Platform, the establishment of the dwelling is assessed as a restricted discretionary activity in terms of Rule 14.6.1(b). However, it should be noted that as the farm shed is within 50m of the existing dwelling on 1075 Highcliff Road, and is understood to have a floor area of not greater than 50% of the floor area of that building. As such, the proposed shed is a permitted in respect of the Landscape rules of the District Plan.
- [17] The earthworks do not comply with either of Rules 17.7.3(ii) and 17.7.4(iii) of the District Plan, in respect of the change in ground level threshold of 2.5m. As such, this element of the proposal is assessed as a restricted discretionary activity, pursuant to Rule 17.7.5(ii). In terms of the volume of excavation, this would otherwise be a controlled activity, at 700m³.

The Council's discretion under this rule is restricted to:

- (a) Adverse effects on the amenity of neighbouring properties.
- (b) Effects on visual amenity and landscape.
- (c) Effects on any archaeological site and/or any cultural site.
- (d) Effects on the transportation network, caused by the transport of excavated material or fill.
- (e) Effects from the release of sediment beyond site boundaries, including transport of sediment by stormwater systems.
- (f) Cumulative effects relating to any of these matters.

As the earthworks were not granted an earthworks permit prior to 1 July 2010 and do not form part of a project that was granted building consent on or after 1 July 2010, the Council's discretion will also extend to the following matters:

- (g) Design and engineering of retaining structures and earthworks.
- (h) Effects on the stability of land and buildings.
- (i) Effects on the surface flow of water and on flood risk.
- (j) Effects on underground utilities.

In assessing these effects, the Council will have regard to the matters in 17.8.1 to 17.8.6.

The Proposed Plan (2GP)

- [18] The subject site is zoned Rural, but is split between two sub-zones. The bulk of the site is zoned Rural – Peninsula Coast in the 2GP. A smaller area in the northern part of the site is zoned Rural- Hill Slopes. The entire site is located within a Wahi Tupuna area and is set within areas of Outstanding Natural Landscape and Coastal Character. The site includes the Peggy's Hill Conservation Covenant (ASCV C065) and contains a prominent ridgeline, located north of the proposed dwelling location. The same areas of high class soils are identified.

Land Use Activity:

- [19] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. The proposed dwelling location is located wholly within the Peninsula Coast-zoned part of the site, such that these rules are of most relevance and more stringent than the Hill Slopes 15ha minimum site size. Rule 16.5.2.1(a) specifies that residential activity on a rural site in the Peninsula Coast zone requires 20ha of land to be a permitted activity. Therefore, the proposed and existing residential activities would be assessed as non-complying activities pursuant to Rule 16.5.2.3. These rules do not have legal effect and are not operative.

Development Activity:

- [20] Rule 16.6.11.1(a) specifies that residential buildings are to maintain 20m setback from road boundaries, and 40m setback from neighbouring boundaries. Both the proposed

dwelling and farm shed will breach these setback distances in accordance with the above discussion regarding yard spacing under the operative District Plan. Any development proposal which does not meet all the performance standards of the Proposed Plan would be assessed as a restricted discretionary activity pursuant to Rule 16.3.2.13. These rules do not have legal effect and are not operative.

- [21] With regard to earthworks, Rule 16.6.1.1 specifies that these must not exceed a maximum change in ground level of 1m or an excavated volume of 20m³, regardless of slope, given the sites location within an Outstanding Natural Landscape. Given the inability of the proposal to comply with these thresholds, the proposed activity would be assessed as a restricted discretionary activity pursuant to Rule 16.3.4.16. These rules do not have legal effect and are not operative.
- [22] In terms of the establishment of buildings within an Outstanding Natural Landscape, there is a similar planning framework to the operative District Plan, except that the 2GP distinguishes between land use and development activities. The activity status of the proposed dwelling as a building on land subject to a Landscape overlay would also be assessed as restricted discretionary. These rules do not have legal effect and are not operative.

National Environmental Standards

- [23] 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.
- [24] While there has not been a HAIL search undertaken in respect of the site, the applicant's agent has indicated that it is more likely than not, that no activities have been undertaken on the site that appear on the HAIL. I accept this conclusion. This is because the land at 1069 Highcliff Road is generally steeply sloping and it is unlikely that any contaminated fill or hazardous activity or industry was undertaken on the site, given the topography and history as part of a larger farm holding. Further, Council's records do not appear to indicate that any HAIL activities have been undertaken on the site. Rural sites can contain former sheep dips, however, these tended to co-located with farm sheds. There is indication that any farm sheds have existed on 1069 Highcliff Road. As such, the National Environmental Standard is not applicable to the proposal.

Planning Status

- [25] Given that the proposal does not specifically involve a subdivision of site under the either District Plan, there are no relevant rules in the 2GP that are operative or have legal effect. Therefore, the proposal is assessed, overall, as a **non-complying** activity under the Operative District Plan.

NOTIFICATION AND SUBMISSIONS

- [26] No written approvals were submitted with the applications. The applicant anticipated the public notification of the proposal.
- [27] The applications were publicly notified in the Otago Daily Times on 18 September 2016. Copies of the application were sent to those parties whom the Council considered could be directly affected by the proposal and those who had submitted on the previous application. Submissions closed on 13 October 2017.
- [28] Eleven submissions were received by the Council, 10 of which were in opposition and one was in support of the proposal, mirroring the previous situation. These

submissions are summarised in the table below, and full copies are attached in Appendix B of this report.

- [29] However, it should be noted that the submission by Hamish Forrester was received on 16 October, three days after the close of submissions and is, therefore, late. As such, it is for the Hearings Committee to determine whether or not the submission should be accepted.

Name	Position	Reason for Position	Wish to be heard?
Save THE Otago Peninsula (STOP) Inc Soc	Oppose	- Has indicated that the effects will be more than minor, particularly in relation to amenity values, landscape character and cumulative effects. - Does not accept the 'exception' argument promoted in the application and suggest the proposal will create a precedent. - Holds the view that further residential activity is incompatible with the Outstanding Landscape Area values. - The submitter is opposed to the proliferation of residential activity on undersized rural sites. Requests: - That consent be declined.	Yes
Norcombe Barker for Larnach Castle Limited	Oppose	- Suggests the rural nature of the peninsula is in continued decline. - Holds the view that the decision should be for the greater good of the community, not so that one person can benefit to the detriment of everybody. - Indicates the proposal would lead to more than minor adverse effects, particularly in terms of landscape character, light pollution and cumulative effects. - Considers the deliberate imposition of the condition requiring the amalgamation covenant by Council was intended to maintain the integrity of the District Plan and recognise and maintain landscape values. Requests - That consent be declined.	Yes
Norcombe Barker	Oppose	- The submitter states the cumulative effects from further development will permanently affect the character of the Peninsula. - Indicates that the proposal is contrary to the intent of the District Plan. - Considers that setting aside the amalgamation covenant would call into question the granting of the original consent. Requests: - That consent be declined.	No
Craig Werner	Oppose	- Is concerned with landscape character, cumulative effects, precedent and plan integrity. - Does not consider that surrounding undersized sites or the proximity of Pukehiki is justification for granting consent. - Considers that proposed landscape planting	Yes

		will not afford adequate visual mitigation. - Does not consider the propose is unique or exceptional. Requests: - That consent be declined.	
Quentin & Michael Furlong	Oppose	- Note that the dwelling will be prominent on Peggy's Hill at an altitude where no other dwellings are located, adding visual clutter. - Is concerned about precedent effects and proliferation of residential activity within the Outstanding Landscape Area. - Considers that the amalgamation covenant should be respected. Requests: - That consent be declined.	Yes
John Wells	Oppose	- Notes that his property was one of a number of undersized sites referred to in the application to promote development on the subject site. He states the development on his property was prior to the inception of the District Plan and therefore little weight can be applied to that argument. - Considers that a clear precedent would be set is the proposal is granted. Requests: - That consent be declined.	No
Hannah & Richard Lawrence	Oppose	- Consider that the proposal will have a more than minor adverse effect on the environment in terms of landscape character. - Consider that PCOLA should continue to be protected and that the Rural zoning is in place to do so. - Is concerned about the impact of the proposal on their own property. - Is concerned about precedent and further applications. Requests: - That consent be declined. - If granted, request a condition restricted sale for 15 years.	No
Lauren O'Brien	Oppose	- Considers that the covenant and limits on residential activity were put in place protect the integrity of the landscape for future generations. - Concerned regarding land speculation risk. - Considers the Council has a reputation for not upholding rules and that a precedent has already been set. Requests - The covenant not be removed; and - That consent be declined.	No
Lynn Samuels	Oppose	States the application referring to thirteen properties within a kilometre are of similar size as the proposed development is irrelevant as they were developed prior to the District Plan taking effect and should not be used as examples of 'non-complying'	No

		properties. • Concern with the elevation of the dwelling location and its visual prominence while landscape planting is becoming established. • Concerned as to the overall success of planting at this altitude. • Concerned that approving the proposal would compromise the integrity of the District Plan. Requests • That consent be declined.	
Gerald Newbury	Support	• Considers that approving the proposal will enhance the district (and village). Requests • That consent be approved.	No
Hamish Forrester	Oppose	• Considers that Subdivision RMA-2005-0071 would not have been approved as a non-notified consent in absence of the covenant condition. • Considers that by removing the covenant, this would undermine all other similar covenants and suggests there is nothing extraordinary about the application to warrant the covenant's removal. • Considers that the proposal essentially equates to a subdivision. • Considers that if consent is granted, this could lead to additional buildings being established under the landscape provisions of the District Plan. • Suggests the assessment of effects provided does not fully account for this occurrence. Requests • That consent be declined	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[30] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in section 3 of the Act as including-

- a) Any positive or adverse effect; and
- b) Any temporary or permanent effect; and
- c) Any past, present, or future effect; and
- d) Any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration or frequency of the effect, and also includes –
- e) Any potential effect of high probability; and
- f) Any potential effect of low probability which has a high potential impact.

[31] The starting point for the assessment of effects is to consider whether or not the "permitted baseline test" needs to be applied: section 104(2) of the Act provides the Council with discretion to disregard the effects of an activity on the environment if the District Plan permits an activity with that effect.

[32] The permitted baseline in this case is limited to one residential unit (existing), farming activity, rural processing activity and forestry. However, given that the site is located within both the NPLCA and PCOLA, any buildings accessory to farming activity may require consent, depending on where they are located. It should be noted that as the

CFRs are currently held together, a complying accessory building can be established within 50m of the existing dwelling, subject to yard set-back compliance. This is indeed how the proposed shed has been assessed. A series of incrementally smaller sheds could then also be established as of right. If the proposed dwelling were approved, a similar scenario would be possible. Some effects arising from such structures may be comparable to the bulk of residential buildings, although are likely to be of a different visual character. In respect of earthworks, there are thresholds controlling the maximum change in ground level and maximum of excavation and/or fill of 2m and 200m³, respectively, were 1069 Highcliff Road to stand alone, without being held together with 1075 Highcliff Road. It should be noted that such earthworks could be carried out regardless of any underlying activity.

- [33] In my opinion it is appropriate for the Committee to apply the permitted baseline to the application, but this is restricted to a single residential unit and a number of farm sheds and relative small amount of earthworks.
- [34] Overall, the application is for a non-complying activity. As such, the relevant assessment matters of the District Plan provide a guide to the assessment of the application but are not an exhaustive list. The assessment matters of the Rural, Landscape and Earthworks sections of the District Plan have relevance in this instance. Having regard to the application, reports from Council departments (refer Appendix C) and a site visit, I consider that the matters listed below require assessment.
- [35] It should be noted as the details of the proposed site development essentially remain unchanged from the previous application in 2016, the advice provided by Council departments in regard to LUC-2016-481 has been relied upon. While this report is my own assessment, I have quoted parts of the section 42A report for LUC-2016-481, where I endorse what has been said and see no need to alter the analysis. This generally relates to elements of the proposal that have remained unchanged.
- [36] An assessment is made of the matters in respect the effects of the proposal:
- Sustainability;
 - Bulk and Location, Amenity Values, Visual Impact and Landscape;
 - Noise, Glare and Lighting and Odour;
 - Water and Effluent Disposal;
 - High Class Soils;
 - Residential Units;
 - Indigenous Vegetation and Habitats;
 - Hazards and Earthworks;
 - Transportation; and
 - Cumulative Effects.

Sustainability

- [37] 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. One means by which the District Plan seeks to achieve sustainable development is through zoning and density provisions. The District Plan also seeks to avoid the indiscriminate mixing of incompatible uses and developments and sustainably manage infrastructure.
- [38] The subject site is approximately 19ha in area and contains one dwelling and a number of accessory buildings. Under the relevant District Plan provisions, not less than 15ha is required in order to establish a residential unit on a rural site as of right. As such, the existing residential activity complies in terms of the present combined site, but the land contained in each of the two CFRs is well below the minimum site area anticipated by the District Plan for residential activity.

- [39] A greater level of residential density has the potential to adversely affect the sustainability of the Rural zone and the amenity values and rural character of the surrounding area. It is of some importance to note that the site lies immediately to the east of the small Residential 5-zoned settlement of Pukehiki, as mentioned above, and is located in the vicinity of undersized rural sites, which contain residential units. The application notes that a number of these sites are within a kilometre of subject site and range from approximately 0.7ha to 11ha. Some of the residential units on these sites exist by virtue of resource consents, while others appear to have existing use rights. While the subject land does adjoin an area that exhibits a density of residential development, higher than anticipated for a Rural zone, my concern is that the proposed dwelling location is in a relatively isolated part, of the site, away from roads, at an altitude (320m) with few other buildings. In my opinion, this detracts from the relevance of the proximity of the Pukehiki settlement to a point where clustering will not occur and cannot be relied upon as meaningful mitigation, as discussed in the amenity values assessment below. This is not to say that other mitigation measures such as landscape planting and dwelling design would not be effective. However, this requires a level of dedication from the applicant to achieve such an outcome. It should be noted that all of the species recommended by the applicant's Landscape Architect are native and are reminiscent of those found in the wider area. One submitter has noted that there are no podocarp species on the list provided by the applicant. While I agree that the establishment further podocarps would be beneficial, particularly in light of the ASCV on the site, the species put forward will reach maturity in a more timely manner, required in order to achieve the desired visual mitigation.
- [40] Further, given the small sizes of the CFRs in question, it is arguable as to whether they could be used sustainably for any permitted rural activity such as farming or forestry, particularly as the District Plan prescribes 15ha for new rural lots. In this respect, it would be preferable for them to remain held together, to ensure some viability, particularly given the conservation values that exist on 1069 Highcliff Road.
- [41] As there is no provision by the Council of services such as water supply or wastewater disposal in the area, the proposal does not represent the unsustainable expansion of infrastructure.
- [42] Therefore, I consider that is somewhat arguable as to whether the proposal represents the sustainable development of the City's natural and physical resources.

Bulk and Location, Amenity Values, Visual Impact and Landscape

- [43] 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".

- [44] As discussed, the application includes details of dwelling design and location, proposed to be established on the land at 1069 Highcliff Road. The dwelling is to have a low profile elongated design, and will incorporate materials and colours that are intended to be sympathetic to the surrounding environment. These design elements will provide a degree mitigation of adverse effects resulting from the bulk of the structure proposed, on the amenity values of the area. Additional mitigation is to be afforded by landscape planting as indicated in the application. In respect of the relationship between site size and amenity, I concur with the following comments made in the section 42A report for LUC-2016-481:

The rural zoning anticipate residential activity at a limited density of one residential unit per 15ha and the rule provisions for the Outstanding Landscape Area restrict but do not exclude dwellings in most circumstances. While the absence of residential buildings may contribute to the perceived amenity of the site as viewed by many submitters, the direction of the District Plan is

fundamentally about managing the effects on structures and associated development. Overall, it is possible that amenity of the immediate or wider area for either building site may not be prejudiced by further residential activity. Overall, it is my view that residential activity will not lead to a loss of amenity that can be considered more than minor over the long terms.

- [45] As noted in the report pertaining to LUC-2016-481, the minimum yard requirements for structures associated with permitted activities require a 20m front yard setback for all buildings. Minimum side and rear yard setbacks for residential units are 40m, buildings designed for housing animals are 12m and buildings other than for the housing animals require a minimum of 6m from the boundary. In this case, the side yard provisions are not met. However, this breach is confined to the boundary with the adjacent land at 1075 Highcliff Road that is co-owned the applicant and any effects arising are considered irrelevant in terms of bulk. Both of the buildings proposed will satisfy the front yard requirement.
- [46] The previous application (LUC-2016-481) was assessed by Council's Senior Landscape Architect, who provided the following comment:

The AEE has been accompanied by a Landscape Assessment Report prepared by Mike Moore. This is comprehensive and detailed, and there are a number of recommended mitigation measures which, if fully enacted if approval were to be given, would combine with the relatively modest scale of the dwelling to considerably reduce adverse effects and maximise integration, should the development proceed.

Mr Moore accepts the proposal would introduce a minor degree of domestication, but is of the opinion that it is not seen as inappropriate in terms of landscape effects in this setting on the edge of Pukehiki settlement which has other dwellings. He notes that in his opinion the visibility would be low from significant public and residential viewpoints and adverse effects on landscape and visual values will be minor initially. This would improve as proposed plantings enhance the natural character values of the area.

General Comment

There are a number of planning related factors which need consideration for this application, including the non-complying activity status, the opportunity for precedence, and plan integrity. I will not comment directly on these elements which are more of a planning preserve, and will concentrate more on effects of the values of the PCOLA. However, in this location from a planning and landscape effects perspective, the number of relevant factors needing to be considered increases the need for very careful overall assessment.

In my opinion this relatively modestly scaled new building, if established with the proposed suite of landscape conditions forwarded in the application, would be likely to have adverse effects on the values of the PCOLA which would be no more than minor after several years. As with any mitigating landscape conditions, however, there is a time element, and initial adverse effects in this more elevated location could initially be minor to moderate until mitigation measures become more fully established.

Some other considerations include:

- I accept that for the most part the dwelling site has "low levels of visibility". However, this is countered to some extent by its elevation on Peggy's Hill and the lack of other nearby structures, both of which increase potential visual sensitivity.*
- There needs to be care about reference to the context of settlement at nearby Pukehiki as a mitigating factor. Although close on plan, the visual context is quite separate. The subject site is on the south east side of Peggy's Hill,*

visually apart from smaller Pukehiki sections and dwellings, which have a more north westerly aspect.

- Notwithstanding these factors, there are some positive elements, including the small scale of the dwelling, proposed landscape activity around the structure, and eventual possible increase to worthwhile site vegetation and greater biodiversity.

Overall in my opinion, although I agree with Mike Moore that in the longer term, with the proposed reasonably innocuous dwelling and appropriate site development the specific adverse effects on the values of the PCOLA are not likely to be more than minor and in some aspects positive; I remain with the concern that the earlier, initial adverse effects may be moderate, prior to establishment and maturity of proposed landscape planting mitigation.

Features and Characteristics of the PCOLA to be Protected.

The Dunedin City District Plan notes these following issues for protection in the PCOLA:

- The general visual dominance of the natural landscape elements over human landscape elements (eg buildings or shelter plantings) giving the area a sense of maturity and harmony.
- An apparently remote, isolated rural character.
- The integrity, extent, coherence and natural character of the landform, streams and remaining areas of indigenous vegetation.
- The minimal influence of any large scale structures or exotic plantings to diminish the impact of the natural landscape forms and features.
- The dramatic coastal landforms and views.
- The presence and quality of human-made features which are relics of the past, eg old lime kilns, stone walls.
- Highlights of 'transient' wildlife interest, eg seals, penguins, etc.
- Outstanding and dramatic landform features including the following which are included in the NZ Geological Society Geopreservation Inventory for the Otago Region:
 - Hoopers/Papanui inlets
 - the Pyramids
 - Sandfly Bay earthflow
 - Sandfly Bay lag surface and ventifacts
 - Sandymount sea arch
 - Sandymount terracettes.
- The extent and quality of areas of remnant forest, eg Taiaroa bush.
- The significance of places which are special to Maori, eg Pukekura (Taiaroa Head), Pyramids, etc.

As noted earlier, with landscape mitigation, effects on the values of the PCOLA are likely overall to be minor. The proposal would introduce human elements into an area which has a predominantly natural character, and this domestication would not be dominant. However, the area currently has no obvious built structures, and any such intrusion would be likely to be more noticed because of this existing unbuilt character.

Prior to establishment and maturity of proposed landscape planting mitigation, in my opinion initial adverse effects on the values of the PCOLA may be moderate.

- [47] These comments remain applicable to the current proposal and I accept the advice provided by the Landscape Architect. In particular, I concur with the comments he has made regarding the altitude of the building site and its proximity to the Pukehiki settlement, and accordingly I have noted this above in paragraph 37 of this report. As a result, this location dictates a heavier reliance on mitigating factors such as dwelling design and landscape planting, compared, for example, with a dwelling site situated close to other buildings amidst a cluster of dwellings. As posited by the applicant's

Landscape Architect, dwelling design and, eventually, landscape planting will result in effects that are more than minor. The Council's Landscape Architect agrees that any adverse effects on landscape and rural character can be mitigated effectively, so as to result in an acceptable outcome. However, his concern is that prior to planting reaching an appropriate maturity after several years, adverse effects may be minor to moderate.

- [48] Relying on the advice provided by the Council's Landscape Architect, it is my opinion that, initially, adverse effects resulting from the bulk and location of the proposed dwelling on landscape values and rural amenity values generally, could be more than minor, prior to landscape planting reaching maturity. However, once landscape planting is properly established, such adverse effects would diminish to a level that could be considered to be no more than minor. This level of mitigation will be dictated by the efficacy of the planting programme, which will in turn depend on the dedication with which it is implemented.
- [49] As noted in the section 42A report for LUC-2016-481, little impact is anticipated in terms of the Peggy's Hill Conservation Covenant, given its separation from the location of the proposed dwelling.

Noise, Glare and Lighting, Odour, Water and Effluent Disposal

- [50] Noise will be limited mostly to vehicle noise, apart from the construction phase of the activity. All construction work on the site should be expected to comply with the provisions of NZS 6803:1999 Acoustics Construction Noise standard. A condition can be imposed if necessary to require compliance, if consent is to be granted. Any adverse effects resulting from glare and lighting can be appropriately controlled by limiting the lux of light emitted from the site and by requiring shades to be used. The application offers a limit of 15% in regard to reflectivity values, which will serve to mitigate any adverse effects with respect to glare during daylight hours. This reflectivity limit is considered acceptable.
- [51] It should be noted that the Council's Water and Waste Services (WWS) Consents Officer commented on the original application. The section 42A report for LUC-2016-481 discussed these comments as follows:

A review of the Council's GIS records indicates that the proposed subdivision is located within the Rural zone and located outside the Rural Water Supply Areas as shown in Appendix B of the Dunedin City Council Water Bylaw 2011. Consequently, no reticulated water supply is available to the proposed subdivision. Stormwater collected from roof surfaces may be used for domestic water supply and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.

As the proposed subdivision is located within the Rural zone, there are no reticulated wastewater services available for connection. All 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.

As the proposed subdivision is located within the Rural zone, there are no reticulated stormwater services available for connection. Stormwater from right of ways, roads, drives, drain coils and water tank overflows are not to create a nuisance on any adjoining properties.

The provision of adequate fire-fighting infrastructure is an important consideration in new developments. W&WWBU advise 'all aspects relating to the availability of the 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. The existing and proposed dwellings must be constructed within 135m of an existing fire hydrant otherwise the proposal will be non-compliant with fire-fighting requirements'. As there are no local connections to a hydrant, should the consent

be approved, the landowner will need to install sufficient storage as set out in the NZFS Code of Practice.

- [52] The WWS Consents Officer sought no conditions for inclusion on the consent certificate, if granted. While the Consents Officer has referred to the proposal as a subdivision, the comments made are still relevant to the proposed land use development.
- [53] In terms of water supply, the applicant proposes to obtain potable drinking by way of a rainwater collection system. In this regard, rainwater must be collected from non-toxic roof surfaces and have a recommended minimum storage capacity of 25,000 litres for domestic use. It is expected that the NZFS Code of Practice will be adhered to in all respects, as part of any approved installation. The requirements of the Code include provision for additional storage over and above domestic supply and the formation of a 4m wide vehicle access.
- [54] The water supply is subject to the requirements of the New Zealand Drinking Water Standards (DWSNZ), which came into effect on 1st January 2006. The applicant should contact Public Health South for further information in this respect.
- [55] It should also be noted that the Regional Plan: Water for Otago allows for the discharge of human sewage through any on-site waste water treatment as a permitted activity, subject to conditions. The inability to comply with these conditions will require resource consent from the Otago Regional Council. As WWS has noted, 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.
- [56] Overall, I consider that if the Hearings Committee are of a mind to grant consent, any adverse effects relating to these matters will be no more than minor. provided appropriate on-site services are designed, installed and maintained in accordance with the standards noted above.

High Class Soils

- [57] The Council's records identify that a small portion on the western side of 1069 Highcliff Road contains high class soils. However, the location of the proposed dwelling is located well away from this area, and will not impact on the usability of the soils. Given the very small area of soils contained within this part of the site, any adverse effects in respect of the productive capacity of the area will be no more than minor. The land at 1075 Highcliff Road contains a much larger area of high class soils, which is not impacted by any buildings. Further, their productive potential will not be impinged upon by any other structures. However, the existing site constitutes an area of greater than 15ha, which is recognised as providing for the productive potential of the land by the operative District Plan. It could be argued that the separation of the two CFRs as proposed could detract from the overall productive potential of the land, particularly given the near absence of high class soils on 1069 Highcliff Road.

Residential Units

- [58] The District Plan directs the Committee to consider the cumulative effects of an increased density of residential units in this area, the potential for conflict and reverse sensitivity issues, amenity and economic well-being of neighbouring properties, the compromising of amenity relating to the open nature of the environment, and the degree to which productive potential use of the site and neighbouring properties may be compromised. Cumulative effects have been addressed in Paragraphs 74-77 of this report.
- [59] The site is rural in character and, therefore, any person who wishes to live in the area should be aware of the sounds, sights and smells that occur within a rural or semi-rural setting. In this instance, the potential for reverse sensitivity issues is low,

particularly as the applicant currently lives on the site and the surrounding area is predominantly used for grazing purposes only.

- [60] The proposed dwelling will not be overly large and will not result in significant coverage of soil by hard surfaces, relative to the area of the site.
- [61] If consent were to be granted, it is not anticipated that the proposed residential dwelling would affect the amenity of neighbouring properties or compromise the open nature of the environment in the longer term. However, during the development stage and the time taken for landscape planting to reach maturity, I consider that there is potential for adverse effects on amenity to be more than minor. This has been discussed in more detail in preceeding paragraphs. In respect of the economic well-being of neighbouring properties, I do not expect any associated adverse effects to be more than minor, particularly given the generally residential nature of the Pukehiki settlement.
- [62] In terms of productive potential, a 19ha lot could be put to a productive use. The separation of the sites as proposed means that the potential for viable farming activity to be undertaken will be diminished, relative to what is anticipated within the Rural zone. I acknowledge that the land at 1069 Highcliff Road is not particularly important in terms of high class soils and has relative steep topography, limiting the types of farming activities able to be undertaken. While this may be so, it is for these reasons that I consider it may be more beneficial for the CFRs to remain amalgamated to maximise the productive potential of the existing site.
- [63] While there is a question around effects on productive potential, overall, I consider that any adverse effects associated with a new residential unit, discussed in Paragraphs 58 to 62, will more likely be no more than minor.

Indigenous Vegetation and Habitats

- [64] As noted above the establishment of residential activity on 1069 Highcliff Road is not expected to be detrimental to the vegetation contain within ASCV C065, which is located on the site, and no adverse effects are anticipated.

Hazards and Earthworks

- [65] With regard to hazards, there have been no material changes since the original application was applied for, except for an acknowledgement by the applicant that the construction of a retaining wall will likely be required. However, this would only be 1.2m in height, which is well below the 2m change in ground level threshold for the zone. While the overall change in ground level will approximately 2.5m, the excavation will otherwise be battered appropriately. The section 42A report for LUC-2016-481 made the following comment is respect of hazards:

The application was forwarded to the Council's Consulting Engineer, Mr Lee Paterson for comment. Mr Paterson reviewed a geotechnical investigation report prepared by Dr Jon Lindqvist, Dated April 2016.

In terms of natural hazard risk, Mr Paterson noted the property is indicated on the NZ Soils Bureau Scientific Report 12: Landslide Potential on the Otago Peninsula as CLASS 4-SEVERE RISK with the following explanatory notes:

- *Situations in which materials of low or moderate shear strength overlies materials of high shear strength with a well-defined surface or potential failure, on gently undulating to rolling slopes that are subject to removal of lateral support or of material from the toe of the slope;*
- *Situations in which materials of moderate shear strength overlies materials of low shear strength, on rolling to strongly rolling slopes, with a well-defined surface of potential failure at the material interface; failure may occur within the overlying moderate shear strength materials;*

- o *Situations in which low shear strength overlies similar strength materials, on flat or undulating slopes, with a well-defined surface of potential failure at the material interface.*

There are no features of mapped landslide instability indicated on either the Otago Regional Council mapping or Dr Lindqvist's report that indicates that the proposed building area and access roads include no observable geotechnical risks.

With respect to the global geological setting, the property contains some steep slopes in excess of 15°. The area including proposed dwelling platform and land immediately downslope is nearly 20°.

Some earthworks will be required. A cut up to 2.5m deep and with some non-structural fill to the downslope edge of the building platform will be carried out. The application notes any earthworks will be less than 200m³ and will comply with the NZS 6803:1999 standard for construction noise. Mr Paterson considers there are no general potential instabilities of concern that may create or exacerbate issues on either the subject site or adjacent properties.

- [66] I note that the Council's Engineer recommended that the application not be declined on the basis of known natural hazards, but suggested a number of consent conditions for inclusion in the consent certificate, should the proposal be granted. In addition to conditions recommended, I consider it prudent to require all earthworks and retaining walls be designed and specified and have their supervised by a suitable qualified person, given the volume of material to be excavated. Given the proximity of the proposed earthworks from external boundaries, it is expected that any adverse on the stability of any adjoining land or buildings will be no more than minor.
- [67] In respect of sedimentation effects, it is important that any sedimentation mitigation is appropriately maintained to ensure that sediment is dealt with effectively on a continuing basis, so that adjoining land remains unaffected. Until an erosion-resistant state is achieved, it is considered appropriate that such mitigation should remain in place. If consent is to be granted, a condition should be imposed that requires such mitigation measures be implemented and maintained for as long as necessary. Provided such mitigation is implemented and maintained, it is anticipated that any resulting effects in respect of sedimentation will be no more than minor.
- [68] There is small watercourse running through 1069 Highcliff Road and it appears the proposed driveway would run relatively close to this. However, it appears that watercourse is either ephemeral or has little flow, minimising any flood risk. Notwithstanding this, steps should be taken ensure sediment does not enter the watercourse in order to limit the sedimentation risk. No significant adverse effects are anticipated on surface water flows as a result of the works and will not likely occur, provided adequate drainage and sedimentation controls are implemented and are maintained until the site is erosion-resistant. On this basis, it is expected that any adverse effects on surface water flows will be no more than minor and that the earthworks are not likely to exacerbate flood risks.
- [69] The proposed earthworks are associated with residential activity. However, as noted above, a degree of earthworks could be carried on the site, regardless of any activity it might be associated with. The earthworks will be contained within the subject site and well away from any external site boundaries. However, given the visibility of the location of the proposed earthworks, there is a potentially risk to rural amenity and landscape values. The applicant proposes to establish landscape planting, which will serve to mitigate any visual impacts, but only after the planting reaches maturity. As such, adverse effects have the potential to more than minor until this time and particularly during the construction. With regard to the formation of the vehicle access, associated earthworks may be more visible at higher altitudes. However, at lower altitudes, viewing opportunities will be more limited. With time, it is expected that any adverse effects on surrounding neighbours will be no more than minor.

However, there may be a period when these could be more than minor, until landscape planting achieves maturity.

It is expected that there will be noise effects associated with the construction of any development. In regard to the proposed construction activity, if consent is to be granted, construction should be limited to the times set out below and shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999:

Time of Week	Time Period	Leq (dBA)	Lmax (dBA)
Weekdays	0730-1800	75	90
	1800-2000	70	85
	2000-0730	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0730	45	75
Sundays and public Holidays	0730-1800	55	85
	1800-2000	45	75
	2000-0730	45	75

The discharge of dust is not permitted to cause a nuisance and must be mitigated accordingly. As such, a condition would be prudent requiring the dampening of any loose soil to prevent dust escaping from the property boundary, especially at lower altitudes.

- [70] There is no indication that the site has any specific archaeological and cultural significance. However, the site is identified within a Wahi Tupuna area under the 2GP. As such, if consent is to be granted, it is recommended that an accidental discovery condition is imposed on the consent, to ensure proper protocol is followed, should an item of interest be uncovered at any point.

Transportation

- [71] Council's Transport Department Planning Officer considered the original application and provided comments. No changes have occurred in terms transportation considerations since the original application was lodged. The section 42A report for LUC-2016-481 contained the following discussion on transportation effects:

Access will be from Highcliff Road at the curve adjacent to the property's frontage. Visibility that can be achieved along the frontage of the site is considered to be sufficient for an operating speed of up to 60km/h as per NZTA RTS 6 guidelines. While no speed surveys are available in this location, Mr Fisher estimated the operating speed at the curve based on desktop calculations, and driving the road in this location, is in the order of 40-50km/h. Achievable sight distance for a vehicle access in this location is considered to be acceptable for the proposed use.

Should the application be approved, the vehicle access shall be a minimum 3.5m formed width, hard surfaced from the edge of the carriageway of Highcliff Road to a distance not less than 5.0m inside the property boundary, and be adequately drained for its duration. The vehicle crossing, between the road carriageway and the property boundary, is within legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from the DCC Transport Group).

In terms of parking and manoeuvring, the Transport Planner noted there is considered to be ample space available within the site to provide for the parking needs of the proposed activity, and to enable vehicles to drive onto and off the site in a forward direction.

Overall, Transportation considers the proposal to have negligible effect on the transportation network. It is my opinion the comments by the Council's Transportation Planner are appropriate given the setting and proposed activity. Overall, I consider the effects on the transportation network will be less than minor.

- [72] I accept the advice provided by the Transport Department and agree with the above conclusion. Should the application be granted, Transportation Operations has recommended a condition regarding vehicle access width and advice notes relating to vehicle access formation and future development. However, the minimum width of 3.5m recommended conflicts with the width prescribed by the Fire Fighting Code of Practice. As such, I recommend that if consent is to be granted, any vehicle access formation condition should require a minimum width of 4m. On this basis, I anticipate that any transportation-related effects will be no more than minor.
- [73] There will be some movement of heavy traffic associated with the earthworks, which will occur for the duration of earthworks construction period. This will depend mainly on whether excavated material is to be retained on-site or not. If it is to be retained on-site, this would significantly limit the number of tracks entering and exiting the site. Clarification from the applicant would help to determine the extent of any associated effects.

Cumulative effects

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

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

- [75] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impacts on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [76] The above assessment of effects has been guided by the assessment matters contained within Sections 6.7 (Rural) of the District Plan.
- [77] In respect of the adverse effects, in this instance it has been assessed that these have the potential to be more than minor, but only with regard to rural amenity and landscape values, in the short to medium term. These effects will be accentuated because of the proposed cancellation of the amalgamation covenant and separation of the CFRs, resulting in an increase in residential density. As a result, particular care would be required in implementing any mitigation measures, especially given the altitude of the proposed dwelling location and its relative isolation from the structures. If satisfactory mitigation can be achieved, any cumulative effects would likely be no more than minor.

Proposed Second Generation District Plan

- [78] As discussed above, the rules applying to land use and development activities in the rural zones are not operative and do not have legal effect. This situation varies from the Rural subdivision rules, which do have legal effect under section 86D of the Act, which occurred at the date of notification of the 2GP.
- [79] However, the application must be considered under both the operative District Plan and 2GP, and be weighted accordingly. While the application was lodged after the 2GP was notified, it is difficult to attribute any meaningful weighting to these rules, particularly given that Council has not yet issued any decision on the matter. It must

also be reiterated the proposal does not constitute a subdivision in terms of the 2GP definition, which refers to the 'creation of fee simple allotments with new certificates of title'. Each of the addresses forming the existing site are held within respective CFRs and no new lots are being created. As such, the proposal is not required to be assessed in respect of the 2GP subdivision rules.

Conclusion of Assessment of Environmental Effects

- [80] On balance, I consider that any adverse effects arising from the proposal will generally be no more than minor. However, unless effective mitigation can be achieved, adverse effects have the potential to be more than minor, especially in respect of landscape values and the rural amenity and character of the site and its surrounds. Mitigation measures proposed by the application such as building design and colour scheme will go a good way toward alleviating these adverse effects. However, in my opinion, it is the landscape planting regime proposed that will be most important in terms of mitigating landscape and amenity impacts. The extent to which this mitigation will be effective will depend on the efficacy of landscape planting and the period over which maturity is reached.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (section 104D(1)(b))

- [81] Section 104D(b) allows a consent authority to grant a resource consent for a non-complying activity only if the effects of that activity are minor, or the application for the activity will not be contrary to the objectives and policies in any relevant plan.
- [82] The following objectives and policies of the District Plan were considered to be relevant to this application:

Sustainability

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	Adverse effects on the amenity values of the Rural zone will ultimately be no more than minor, but only once landscape planting has reached a certain maturity. While rural amenity values will not be enhanced by the proposal, they will be maintained. While there is a degree of conflict with these provisions, the proposal is not 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 proposal is considered to be consistent with these objectives and policies. The proposal would be self-reliant with respect to services.
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.	The proposal involves the establishment of a residential activity on an 8ha rural site and the
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	

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.	reduction of the site of the existing residential activity to 11ha. As such, the size of the resulting sites do not individually lend themselves to viable farming activity, particularly 1069 Highcliff Road, as its size significantly limits its productive potential. As such, it would preferable for the two subject CFRs to remain amalgamated, to ensure the productive potential of the land is maximised. However, the proposal intends the separation of the CFRs, thereby potentially diminishing this productive capacity. Therefore, the proposal is inconsistent with these provisions.
Policy 4.3.6	Provide access to natural and physical resources.	The proposal is considered to be generally inconsistent with Policy 4.3.8. While the adverse effects of the proposal are likely to be no more than minor, the proposal will breach the density requirement of the Rural zone for residential activity, such that the use of zoning by the District Plan to control use and development will be detracted from. However, access to natural and physical will not be significantly affected and the proposed residential activity is not considered to be incompatible with the surrounding environment, particularly given the existence of residential activities on other undersized sites in the surrounding area and the presence of the settlement at Pukehiki. Therefore, on balance, the proposal is considered to be consistent with Policies 4.3.6, 4.3.7 and 4.3.9.
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	
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.	

Manawhenua

	Objective/Policy	<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. Kai Tahu ki Otago did not provide a submission and in this regard it 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

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective or Policy?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The proposal is considered to be inconsistent with this objective and policy, particularly given that the land areas comprised in each CFR are small within a rural context, limiting their productive potential. In this respect, both sites would benefit from the continuation of the existing amalgamation.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	

Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The proposal will increase the density of residential activity in the Rural zone. However, the applicant proposes that the dwelling is to be of a design that is sympathetic to the surrounding environment and would make use of a low reflectivity value of 15% to reduce its conspicuousness. However, landscape planting will take some time reach a level that will provide meaningful mitigation. In the interim, there is a risk that the proposed dwelling could detract from rural amenity values and character, resulting in effects that are more than minor. This would be accentuated by the relative isolation and altitude of the proposed dwelling location. While the Pukehiki settlement is an example of other residential activities in the area, I am hesitant to suggest the proposed dwelling would be 'clustered' with these activities. Consequently, landscape planting is key to the mitigation of effects on rural character and amenity. As such, , I consider the proposal to be inconsistent with this objective and Policy 6.3.5. With the implementation of appropriate mitigation measures, the adverse effects on amenity will be reduced to an extent that the proposal will not be contrary to these provisions. Policies 6.3.6 and 6.3.14 are also a relevant consideration, particularly in regard to amenity values, rural character and Landscape Management Areas. My assessment above has concluded that adverse effects are likely to be no more than minor, but only with the dedicated implementation of mitigation measures and after landscape planting has reached maturity. However, Policy 6.3.14 stipulates that adverse effects should not occur, irrespective of the ability of a site to mitigate such effects. In absence of the mitigation proposed, I am the opinion that effects would potentially be more than minor. Therefore, I consider that the proposal is contrary to policy 6.3.14.
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) Landscape Management Areas or Areas of Significant Conservation Values. Irrespective of the ability of a site to mitigate adverse effects on the immediately surrounding environment.	
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 proposal is consistent with this objective and policy with regard to the management of the roading network, as was assessed by Transport. The proposal will be self-catering with respect to stormwater and sewage disposal and will not add any undue pressure to the Council reticulated supply.
Policy 6.3.8	Ensure development in the Rural 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.	As noted, the proposal will result in the fragmentation of rural land, if the covenant holding the two CFRs together is cancelled. This will result in two undersized sites, limiting their productive potential. However, it is not likely that the undersized sites and the residential activity proposed will lead to conflict between land uses. In particular, the proposal is not likely to occur to the detriment of the indigenous vegetation protected by ASCV C065. While there is the potential for such issues to arise in some rural areas when sites change ownership,
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.	
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.	

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.	in this instance, the potential for reverse sensitivity issues is low, particularly as the applicant currently lives on the site and that the surrounding area is predominantly used for grazing purposes only. Therefore, the proposal is considered to be inconsistent with but not contrary to Policies 6.3.11 and 6.3.12.
Objective 6.2.6	Maintain and enhance the life-supporting capacity of land and water resources.	It is anticipated that the establishment of the proposed dwelling will not be to the detriment of the maintenance or enhancement of the life-supporting capacity of land and water resources. It should be understood that the relevant provisions of the Regional Plan: Water for Otago must be complied with. The proposal is considered to be consistent with this objective.

Transportation

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective or Policy?</i>
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The Council's Transport Department is of the opinion that the effect of traffic generated by the proposal will be no more than minor, provided the vehicle entrance is appropriately formed. The proposal is, therefore, considered to be consistent with these objectives and policies.
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.	
Policy 20.3.5	Ensure safe standards for vehicle access.	

Landscape

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective or Policy?</i>
Objective 14.2.1	Ensure that the City's outstanding natural features and landscapes are protected.	The mitigation measures proposed by the applicant will ultimately address adverse effects on the landscape and ensure that values are protected. However, as advised by the Council's Senior Landscape Architect, there is the potential for the values of the PCOLA to be detracted from prior to landscape planting reaching maturity. Other mitigation measures such as dwelling design, colour scheme and low reflectivity will afford some mitigation, in absence of mature landscape planting. Generally, the dwelling's design and appearance would be sympathetic to and compatible with the underlying rural character of the area. Overall, the proposal is considered to be inconsistent with these objectives and policies.
Objective 14.2.2	Ensure that the natural landscape characteristics of the coastal environment, wetlands, lakes, rivers and their margins are preserved and protected.	
Objective 14.2.3	Ensure that land use and development do not adversely affect the quality of the landscape.	
Objective 14.2.4	Encourage the maintenance and enhancement of the quality of Dunedin's landscapes.	
Policy 14.3.2	Identify and preserve the important characteristics that create the natural landscape character in the coastal environment, wetlands, lakes, rivers and their margins (as listed in part 14.5.2...)	
Policy 14.3.4	Encourage development which integrates with the character of the landscape and enhances landscape quality.	

Environmental Issues

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 21.2.2	Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.	Provided the requirements of the District Plan with respect to noise and glare can be complied with, any adverse effects on other properties will be no more than minor. The proposal is,

Objective 21.2.3	Ensure that the finishing of structures, the construction of signs and the shielding of light sources avoids, remedies or mitigates nuisance glare.	therefore, considered to be consistent with these objectives and Policy 21.3.3.
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and amenity.	
Objective 21.2.4	Ensure the disposal of wastes is undertaken in a manner that avoids, remedies or mitigates adverse effects on the health and amenity of people and communities within the City, and on their environment.	Waste disposal should be undertaken in accordance with the requirements of the Regional Plan: Water for Otago. Provided this is done, the proposal will be consistent with these objectives and policies.
Policy 21.3.6	Manage waste disposal facilities on land in a manner that minimises adverse effects on the health of people and communities, and on amenity values within the City.	
Objective 21.2.5	Have regard to the effects of discharges associated with activities when considering resource consent applications.	
Policy 21.3.8	Avoid where practicable, or otherwise remedy or mitigate, the adverse effects of activities discharging to land, water or air.	

Hazards and Earthworks

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
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 identified as being subject to potential land stability issues. However, the Council's Geotechnical Engineer has assessed the proposal and has not raised any issues or reasons as to why the application should not be granted. As such, the proposal is expected to be consistent with this objective.
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.	The earthworks for this development are not expected to 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.	

2GP Objective & Policy Analysis

[83] The relevant objectives and policies of the 2GP must be considered alongside the objectives and policies of the operative District Plan. These are assessed below.

Transportation

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficiency 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.	As noted in the section 42A report for LUC-2016-481, no changes are required to the existing roading network in respect of the proposal. The new access is not expected to compromise parts (a) or (b) of this objective. As such, 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.	There are no changes proposed for the roading network except for the new vehicle crossing onto Highcliff Road.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all	As noted previously, there is limited visibility along Highcliff Road from the location of the proposed vehicle crossing. However, provided

	travel methods.	the operating speed as calculated by the Transport Consent Planner is observed in respect of cornering, the proposal can be considered to be consistent with this objective and these policies.
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.	

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 proposed dwelling will be self-serviced, such that no demand will be placed on Council infrastructure. There is no requirement to install any new infrastructure to be vested with Council. The proposal is considered to be consistent with this objective.
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	As noted previously, the proposed dwelling will be self-serviced with regard to wastewater and stormwater. Appropriate management of stormwater and wastewater will be overseen via any building consent process. Any on-site wastewater disposal system will need to be designed by an appropriately qualified person. Given the size of the site and location of proposed dwelling, it is expected that appropriate management can be achieved. Further, the WWS department has not raised any concerns in this respect. Adequate water supply will also need to be available at all times for fire-fighting purposes. Provided all such systems are appropriately designed and managed, it is considered that the proposal is consistent with this objective and these policies.
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.	
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.	

Natural Environment

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 10.2.1	Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced	The proposal is not expected to occur to the detriment of the conservation covenant (ASCV C065). Also, the applicant intends to use only native species for the purpose of landscape planting. As such, the proposal is considered to be consistent with this objective and policy as the conservation values are likely to be maintained. It is my understanding that no indigenous vegetation is required to be removed in relation to the proposal. Further, the applicant proposes to remove weed species such as gorse, which will allow for the improvement of biodiversity on the site and encourage additional planting of native species. As such, the proposal is considered to be consistent with this policy.
Policy 10.2.1.1	Encourage conservation activity in all zones.	
Policy 10.2.1.3	Limit indigenous vegetation clearance in the rural and rural residential zones to a size that avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor.	

Objective 10.2.5	Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development and their values, as identified in Appendix A3, are maintained or enhanced.	The applicant has proposed mitigation measures designed to minimise the effects of residential development on the landscape. Once landscape planting is properly established, it is expected that adverse effects on landscape values will diminish to a level that could be considered no more than minor. In the short to mid-term however, these effects have the potential to be more than minor. As such, the proposal is considered to be inconsistent with this objective and this policy.
Policy 10.2.5.8	Require new buildings and structures, additions and alterations, and wind generators - on-site energy generation in Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones to have exterior colours and materials that avoid or, if avoidance is not possible, minimise adverse visual effects caused by reflectivity.	

Rural Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
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.	While the proposal does not constitute a subdivision of the land, the proposal will result in the fragmentation of a 19.6ha site and diminish its productive potential as a result. This issue is exacerbated by the inability of the proposed lots to comply with the minimum site sizes required within the Rural zones in question, particularly that of the Peninsula Coast zone, which requires a 20ha minimum site size. While some level of farming activity could potentially be undertaken, the separation of the sites and proposed residential unit, will likely not be supportive of farming activity, given the resulting site sizes, in the eyes of the 2GP. Therefore, the proposal is considered to be contrary to this objective and these policies.
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.	
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.	
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.	Neither the existing dwelling nor the proposed dwelling will be adequately setback, as they do not comply with the 40m side required within the zone. However, given the two resulting sites are adjoining and will be subject to land use consent if granted, any risk of reverse sensitivity is anticipated to be low. Further, the proposed dwelling will comfortably satisfy the 40m yard to all other side boundaries, minimising any reverse sensitivity issues. Therefore, the proposed residential activity is considered to be inconsistent with this objective and policy.
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.	
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; 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;	The proposal seeks to establish a residential dwelling within an area where dwellings are generally at lower altitudes and closer to roads. As such, the proposal has the potential to adversely affect rural character and amenity values, given the otherwise open nature of the area and lack of built structures.

	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.	Mitigation measures are proposed as discussed above, which include, dwelling design features and landscape planting. However, it may be some time before such planting affords the desired level of mitigation. As such, it is considered that the proposal is inconsistent with this objective and these policies.
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.	
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.	
Objective 16.2.4	The productivity of rural activities in the rural zones is maintained or enhanced.	The objective seeks to maintain or enhance productivity in the rural zone. Policy 16.2.4.4 seeks to avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities. The proposal will fragment a 19ha site, resulting in two undersized sites, each with their own residential activity. Therefore, it is considered that the proposal is contrary to this objective and Policy.
Policy 16.2.4.4	Avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities.	
Objective 16.2.5	Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: 1. visual amenity and character; 2. the stability of land, buildings, and structures; and 3. surrounding properties.	The Council's Geotechnical Engineer has assessed the proposal and is satisfied that there are no general potential instabilities of concern and that the proposal will not create or exacerbate instabilities on the subject site or adjacent properties. Further, I note that the earthworks are to be well away from boundaries, the proposed retaining will be limited to 1.2 in height and the earthworks will otherwise be appropriately battered. In terms of visual amenity and character, landscape planting would eventually mitigate any associated adverse effects. However, such effects may be more significant in the interim, in absence of the dwelling or mature landscape planting. This is particularly so in respect of the vehicle access as no detail is available as to the extent of the cuts required. On this basis, it is considered that the proposal is inconsistent in part with this objective and these policies.
Policy 16.2.5.1	Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by: a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b. using a batter gradient that will be stable over time.	
Policy 16.2.5.2	Require earthworks and any associated retaining structures to be designed and located to minimise adverse effects on surrounding sites and the wider area, including by: a. limiting the scale of earthworks that are provided for as a permitted activity; and b. requiring earthworks to avoid sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems.	
Policy 16.2.5.3	Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects will be avoided or, if avoidance is not possible, adequately mitigated: a. adverse effects on visual amenity and character; b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and c. adverse effects on the stability of land, buildings, and structures.	

- [84] As the Proposed 2GP is currently going through the submission and decision-making process, the objectives and policies of the operative District Plan have been given more weight than those of the 2GP.
- [85] While the size of the resulting sites will not meet the density provisions of the District Plan in respect of residential activity within the Rural zone, it is difficult to conclude that the proposal completely offends the key objectives and policies of the Sustainability and Rural sections of the District Plan. This is because the applicant proposes certain mitigation measures in respect of the development of 1069 Highcliff Road. Such mitigation measures are of the utmost importance in this instance, given the lack of built structures located at altitude in this area of the Rural zone, providing for a good degree of open, natural character. The provisions of the Sustainability Section of the District Plan promote the use of zoning to provide compatible land uses. I consider that this proposal is not necessarily incompatible with the existing land use, however, it is imperative that any mitigation proposed should achieve an appropriate outcome, particularly given that the proposal will result in the fragmentation of rural land. If the proposed dwelling was to be located at a lower altitude and closer to a road, this would be more consistent with the existing pattern of residential development. If this were the case, I would likely take a more positive view of the effectiveness of any mitigation proposed.
- [86] To reiterate, the proposal will result in fragmentation of land in the rural zone and create sites with diminished productive capacity. In this regard, the land would certainly benefit from continuing to be held together by way of the amalgamation covenant.
- [87] Most importantly, however, Policy 6.3.14 states that subdivision or land use activities should not occur where this may result in cumulative adverse effects, particularly in respect of rural amenity and character, irrespective of any mitigation. As discussed above, I have assessed that there is the potential for such effects to be more than minor, in absence of established, mature landscape planting. Therefore, my assessment indicates that the proposal is contrary to this provision. I also consider the proposal is contrary to policy provisions of the proposed 2GP regarding density of residential activity in rural zones. However, overall, the proposal is generally considered to be inconsistent with but not contrary to the key policies that are relevant in both Plans, and consistent with many other policy provisions. In this case, the relevant provisions include those of the Sustainability and Rural sections of the operative District Plan.

Assessment of Regional Policy Statements (section 104(1)(b))

- [88] 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. At the time of writing this report, the PRPS is under appeal.
- [89] I generally concur with section 42A report for LUC-2016-481, in that the proposal is considered to be generally 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 10: Biota. However, it is considered that the proposal is inconsistent with Objective 5.4.1 in respect of maintaining or enhancing productive capacity and Objective 9.4.1 in respect of amenity values. It is also considered to be generally consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:
- Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
 - Policy 3.1.9: Ecosystems and indigenous biological diversity;
 - Policy 3.1.10: Natural features, landscapes and seascapes;

- Policy 3.1.12: Environmental enhancement;
- Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.
- Policy 3.2.2: Managing significant vegetation and habitats;
- Policy 3.2.3: Identifying outstanding natural features, landscapes and seascapes.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way;
- Policy 4.3.1: Managing infrastructure activities;
- Objective 5.3: Sufficient land is managed and protected for economic production;
- Policy 5.3.1: Rural activities.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [90] When considering an application for resource consent, any assessment of the proposal to be made is subject to consideration of the matters outlined in Part 2 of the Act. This includes 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)(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"*; and
 - 7(f) *"Maintenance and enhancement of the quality of the environment"*.
- [91] With regard to Section 5(2)(a), it is considered that the proposal, which essentially involves the creation of two undersized sites and an additional residential unit will potentially impact on the productive capacity of the land, particularly given that the operative District Plan requires 15ha at a minimum, and the total area of the subject site at 19.6ha. Therefore, the proposal is at odds with this section.
- [92] With regard to Section 5(2)(c), it is considered that, on balance, any adverse effects on the environment relating to the proposal will likely be no more than minor, but only after proposed landscape planting has reached a level of maturity that affords meaningful mitigation. As such, the proposal has the potential to result in significant adverse effects in the short to medium term, particularly in regard to rural amenity and landscape values. Ultimately, the proposal will be consistent with this section, however, this may take some time to achieve.
- [93] With regard to Section 7(b), given that the resulting sites will be undersized in respect of the minimum required, it is difficult to suggest that the proposal constitutes the efficient use and development of natural and physical resources.
- [94] With regard to section 7(c), given the location of proposed dwelling, it is considered that the proposal could potentially result in significant adverse effects on rural amenity and landscape values in the short to medium term. While the applicant has proposed the establishment of landscape planting, I am not convinced that such mitigation would necessarily lead to the enhancement of amenity values. However, provided landscape planting is implemented as proposed, amenity values will at least be maintained in the longer term.
- [95] With regard to section 7(f), it is considered that the proposal could adversely affect the quality of the environment, given the location of the proposed. Given that the conservation covenant (ASVC C065) will not be detracted from by the proposal and that the applicant is proposing additional planting, it is likely that the quality of the

environment will at least be maintained. However, this will depend on the care and dedication with which additional planting is implemented.

- [96] Overall, I consider the proposal to be generally inconsistent with those matters outlined in Part 2 of the Act.

Section 104

- [97] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that there is some likelihood that the adverse effects of the proposal could be more than minor, but only in respect effects on rural amenity and landscape values and any associated cumulative effect. However, with the implementation of appropriate mitigation measures, particularly landscape planting, it is considered that any adverse effects will ultimately be no more than minor.
- [98] Section 104(1)(b)(iv) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report has concluded that the application is contrary to at least one of the key objectives and policies in both the operative and proposed District Plans, but that overall, the proposal is generally either consistent or inconsistent with objectives and policies of each plan.
- [99] Section 104(1)(b)(iii) requires the Council to have regard to any relevant regional policy statement, regional plan or National Environmental Standard. The proposal is considered to be consistent with the relevant objectives and policies of the Regional Policy Statement for Otago. The proposal is also consistent with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- [100] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Case law has directed that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.
- [101] Therefore, the Committee must consider whether or not, in allowing this activity, an undesirable precedent will be set, such that other parties may expect that similar developments could be undertaken. Before determining whether or not to grant consent to the proposal, the Committee should give consideration to whether the proposal exhibits any aspects which separate it from the majority of sites in the vicinity, or indeed in the Rural zone generally.
- [102] A true exception, it is something that is outside the generality of the provisions of the District Plan and the zone, although the circumstances need not be unique. The Environment Court in its decision on Blueskin Forest heights (ENV-2009-CHC-098) observed that concern with consistent administration is being overstated and needs to be applied with due caution. It is accepted that consideration of this question must be applied with due care and examined on a case by case basis.
- [103] It is important to bear in mind that the proposal to establish the proposed residential unit and authorise the existing unit relies inextricably on the cancellation of the amalgamation covenant required by Subdivision Consent RMA-2005-368699. An application for the cancellation of the covenant (S240-2017-1) is being considered alongside applications LUC-2017-401 and 402, which cannot be realised without this cancellation. Consequently, while the proposal does not constitute a subdivision, if granted, the result is essentially the same. In the eyes of the operative District Plan, a 19ha site would seem to comfortably fit within the bounds of what is anticipated within the Rural zone. As such, the fragmentation of the site, as proposed, would represent a significant deviation away from what is anticipated. Further, the degree to which the area is devoid of many built structures, particularly at higher altitudes, is

notable. The applicant has listed a number of sites in the vicinity of the subject site that are also undersized. However, each application must be assessed on its own merits and the factors peculiar to the proposal. If the CFRs in question were not held together, I would be less concerned in terms of the risk to plan integrity. As such, I do not consider that the presence of similarly sized sites is enough evidence to suggest that similar applications may not follow if this proposal is allowed, particularly, from a subdivision perspective.

- [104] Further, I agree with the comments made by some submitters that the proposal would, in effect, bring in to question the decision to grant RMA-2005-368699 on a non-notified basis. The covenant condition that was subsequently imposed enabled the creation of a site (the subject site) that satisfied the 15ha minimum site size required in the Rural zone. It is likely that the subdivision application would have dictated public notification, in absence of this condition.
- [105] Therefore, for the above reasons, I consider that the proposal will potentially undermine the integrity of the operative District Plan and lead to an undesirable precedent in respect of the minimum site size of the Rural zone, both locally and from a city-wide perspective.

Section 104D

- [106] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity that will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [107] In the assessment of effects I concluded that on balance, any adverse effects resulting from the activity would likely be no more than minor, but that particular concern should be had in regard to the effectiveness of mitigation of adverse effects on rural amenity values and character, as well as landscape values. I also concluded that the proposal is generally either consistent or inconsistent with the key objectives and policies of the District Plans, apart from Policy 6.3.14 of the Operative District Plan and two objectives and related policies of the proposed 2GP, with which the proposal is in my opinion contrary. Therefore, based on this assessment, it would seem that the proposal is able to pass both of the gateway tests of section 104D, but only marginally.
- [108] Only one limb of section 104D need be satisfied for Council to consider granting consent. It is, therefore, within the Hearing Committee's discretion to grant consent in this instance.

RECOMMENDATION

- [109] Having regard to the above assessment, I recommend that the application to authorise residential activity on undersized sites and related application to cancel the Section 220(2)9a) covenant in order to create these sites be declined, for the reasons given below.

REASONS FOR RECOMMENDATION

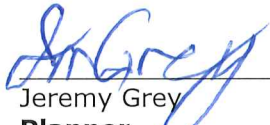
1. The proposal diverges significantly from the minimum site size required within the Rural zone. In terms of the policy framework of the District Plan, zoning is one of the main mechanisms by which the District Plans uses to safeguard the extent to which land can be used for a particular land use. In this instance, the effects of allowing the establishment of an additional residential activity can be mitigated once proposed landscape planting has reached maturity. In absence of mature landscape planting, it is my opinion that adverse effects will be more than, particularly in respect of rural amenity and landscape values. Consequently, while I consider that the proposal is

either consistent or inconsistent with many relevant objectives and policies of the District Plans, it is contrary to a number of policy provisions related to rural amenity values.

2. The Rural zone rules of the Operative District Plan specify a minimum site of 15ha. The outcome sought by the application is for the residential use of land titles that fall significantly short of this area, with the development of a new residential site on the smaller of the titles. Further, there is little about the application that would allay any concerns regarding the risk of setting an undesirable precedent and the consistent administration of the District Plan. Rather, the presence of, and history surrounding, the covenant holding the two subject CFRs together is a very important consideration in this matter and should not be taken lightly. Therefore, I consider that the proposal could undermine the integrity of the District Plan as any perceived precedent set by the granting of consent may significantly detract from the outcomes sought.

3. Having regard to case law, the recommendation to decline consent is supported by the principles outlined in *Berry v Gisborne District Council*. There is a high likelihood that materially indistinguishable and equally clashing further applications will follow and, therefore, the integrity of the District Plan will be imperilled if consent is granted. Maintaining the integrity of the District Plan zoning framework is of primary importance in terms of maintaining the pattern of development intended within the Rural zone and this proposal is not a 'true exception' whereby the perceived creation of a precedent will be avoided.

Report prepared by:



 Jeremy Grey
Planner
 22/1/18

 Date

Report checked by:



 Campbell Thomson
Senior Planner
 22/1/18

 Date