

13 March 2018

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RESOURCE CONSENT APPLICATION:

**SUB-2017-101 AND LUC-2017-531
57-63 ALBERTSON AVENUE
PORT CHALMERS**

INTRODUCTION

- [1] Your application for the subdivision of 57-63 Albertson Avenue to create one additional residential lot and associated land use consent was processed on a notified basis in accordance with Sections 95A to 95G of the Resource Management Act 1991 (the Act). One submission was received on the application and the submitter did not wish to be heard in respect of the application and it was determined that a hearing was not required. Pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager, under delegated authority, on 13 March 2018
- [2] I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to subdivide the subject site at 57-63 Albertson Avenue, Port Chalmers into two residential lots. Lot 2 is proposed to comprise the bulk of the land (approximately 1631m²) and contain the existing building which is divided internally into four residential units. Lot 1 is currently vacant with a proposed area of 300-325m².
- [4] Land use consent is also sought for the residential activity on Lot 2 as it will not comply with the density requirements of the operative District Plan on the reduced site area created by the subdivision.
- [5] A copy of the application, including plans of the proposed subdivision and associated landuse to establish a residential activity on an undersized lot, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [6] The subject site is a corner site located at the road Junction where Albertson Avenue loops back to the start of the road. It is situated within the residential area of Port Chalmers.

- [7] The site currently contains four residential units contained within one structure that faces onto the eastern portion of Albertson Avenue. The residential units are two storey with each having individual vehicle access from the road carriageway. All of the residential units have access provided from the eastern portion of Albertson Road with the exception of 63 Albertson Avenue which is accessed from the north-western portion of the road.
- [8] The residential units are located approximately 6.6m from the road carriageway with the majority of the amenity open space contained behind the residential units. The residential building is rectangular in shape and extending 30m parallel to the road with a depth of 9m.
- [9] The rears of the units have existing yards containing the amenity open space which are defined by internal fencing to divide the land space between the units. The rear yards have areas of 300-380m² with the exception of the residential unit at 63 Albertson Avenue which has a yard area significantly larger (727m²) than the yards associated with the other residential units as a result of being located on the corner. Most of this yard space is lawn.
- [10] The subject site is legally described as Lot 1 Deposited Plan 7074 (held in Computer Freehold Register OT9B/122) with an area of 1707m² more or less. The title is subject to Part IV A Conservation Act 1987 and Section 11 Crown Minerals Act 1991. There are no other restrictions recorded against the title.

ACTIVITY STATUS

- [11] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [12] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

Dunedin City District Plan

- [13] The subject site is zoned Residential 1 in the Dunedin City District Plan and is not subject to any designation, scheduled activities or planning overlays. Albertson Avenue is classified as a Local road in Council's roading hierarchy.
- [14] The subject site has been identified in Council's Hazard Register as being subject to the following;
 - Hazard ID 10107 – Land Stability/Subsidence (Harbour Reclamation)
 - Hazard ID 11407 – Seismic/Liquefaction (Domain C)

Subdivision

- [15] Subdivision is a restricted discretionary activity within the Residential zones where the application complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12, and the resultant sites comply with the minimum area and frontage requirements for the zone (Rule 18.5.1(iii)(a)).
- [16] In this case, the proposed subdivision complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12 and the minimum frontage requirements of the zone

but does not comply with the minimum area of the zone. For clarity, the minimum frontage required in the Residential 1 zone is 3.5m with both of the lots complying with this requirement.

- [17] Rule 8.7.2(xii)(a)(i) requires a minimum 500m² area in the Residential 1 zone. Proposed Lot 1 has an area of 300-325m² (subject to survey) and therefore is unable to comply with this rule. As the overall density of residential development does not comply as noted below, the alternative density provision of Rule 18.5.1(iii)(b) does not apply.
- [18] In accordance with Rule 18.5.2, the proposed subdivision is a **non-complying activity**.

Land use

- [19] Residential activity at a density of not less than 500m² of site area per residential unit is a permitted activity in accordance with Rule 8.7.1(i) of the District Plan. However, this rule contains the provision that a single residential unit can be erected on an existing site of any size.
- [20] As long as the dwelling to be erected on Lot 1 is constructed subsequent to the subdivision, the development of Lot 1 will comply with Rule 8.7.1. Although Lot 1 will have a maximum area of 325m² for a residential unit, it will become an existing site once titles are issued for the new lots. Lot 2 will have an area of 1631m² with an existing 4 residential units on site, resulting in a density of one residential unit per 407.75m².
- [21] There are existing sheds on the boundary of the proposed new lots which will need land use consent if they are to remain. However, taking into consideration of the Building Act requirements, it is more appropriate that they be relocated or demolished. This will be required as a condition of consent.
- [22] The breach of the density requirements is not provided for as a controlled, restricted discretionary or discretionary activity in the Residential zone. Therefore the proposed land use activity is considered to be a **non-complying activity** in accordance with Rule 8.7.6(iii) which states;

'Any activity not specifically identified as permitted, controlled or discretionary by the rules in this zone or in the rules of Sections 17 to 22 of this Plan is non-complying. This rule does not apply to activities identified as permitted, controlled or discretionary in the rules of Sections 13 to 16 of the Plan, regardless of where in the zone those activities are undertaken.'

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

- [23] The subject site is located in the General Residential 2 zone in the proposed 2GP. The site is not identified in any proposed overlays or mapped areas in the 2GP.
- [24] It is noted that the General Residential 2 zone of the 2GP has a proposed density requirement of 300m² rather than the current 500m².

Subdivision

- [25] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider.

Land Use

[26] In this instance, there are no relevant 2GP rules to consider.

[27] Overall, application is considered as a **non-complying activity**.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

[28] 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.

[29] A HAIL search was undertaken at the request of the applicant (HAIL-2017-85) which found no evidence in the Council records of any activities on the HAIL list having occurred on the application site.

[30] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the subdivision.

WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

[31] No written approvals were submitted with the application.

[32] After initial consideration of the application, it was considered that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment, but the proposal may introduce plan integrity issues based on the current operative rules. It was therefore determined that the application should be publicly notified

[33] The application was publicly notified in the Otago Daily Times on 27 November 2017 with submissions closing date of 15 January 2018.

[34] Copies of the notice and application were sent to the those parties the Council considered could be directly affected by the proposal being;

- 1 Albertson Avenue – Owner and Occupier
- 2 Albertson Avenue – Owner and Occupier
- 3 Albertson Avenue – Owner and Occupier
- 4 Albertson Avenue – Owner and Occupier
- 6 Albertson Avenue – Owner and Occupier
- 8 Albertson Avenue – Owner and Occupier
- 53 Albertson Avenue – Owner and Occupier
- 55 Albertson Avenue – Owner and Occupier
- 57 Albertson Avenue – Occupier Only

- 59 Albertson Avenue – Occupier Only
- 61 Albertson Avenue – Occupier Only
- 63 Albertson Avenue – Occupier Only

[35] One submission was received by the close of the submission period. This submission was in support of the application, no submissions were opposed and no submissions were neutral.

[36] The submission is summarised in the table below, and a full copy of the submission is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Matt Lemon	Support	▪ Subdivision and proposed residential activity will be more fitting to residential amenity than an empty area. Negative effects seem limited in comparison and not more than minor.	No

Requirement for hearing

[37] As it is recommended in the assessment below that resource consent be granted to the activity, no submissions in opposition were received in respect of the application and neither the applicant or submitter in support wish to be heard, it is considered that there is no need for a hearing of the application (Section 100 of the Act). Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary and that the decision can be made under delegated authority.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[38] 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.*

[39] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential), 18.6.1 (Subdivision) and 20.6 (Transportation) of the Dunedin City District Plan considered relevant to the proposed activity. Accordingly, assessment is made of the following effects of the proposal:

- Sustainability
- Lot size, Dimensions and Physical Limitations
- Easements

- Infrastructure
- Transportation;
- Hazards;
- Amenity Values, Bulk and Location and Visual Impact;
- Cumulative Effects.

Dunedin City District Plan

Sustainability (Assessment Matter 4.3)

- [40] The proposed subdivision and associated residential use is not considered to have an adverse impact on the continued sustainability of the provision of infrastructure services and protection of physical resources.
- [41] The proposal will result in one additional dwelling on a site with a multi-unit residential building. The water and waste services business unit are satisfied that the existing infrastructure can accommodate the increased service demand. While the density exceeds the current plan provisions, the technical evidence for the development in the 2GP has established that this density is achievable in terms of infrastructure in the locality of the site. This can give sufficient assurance that suitable provision of infrastructure and physical resource is available to support the proposed density level, from Council's perspective.
- [42] The proposed subdivision and associated residential activity will also result in the provision of additional housing in the Port Chalmers area which has a limited amount of land available for additional dwellings. The provision of the additional residential activity will not result in the loss of land that could have been utilised for alternative purposes, as it is currently an underutilised backyard area of an existing residential building. The additional site created by the subdivision will not compromise the established residential amenity values.

Lot Size and Dimensions (18.6.1(q)) and Physical Limitations (18.6.1(k))

- [43] The proposed lots are unable to comply with the minimum lot sizes required in the Residential 1 zone. Proposed Lot 2 contains the existing four residential units and will have a total area of 1631m², resulting in a density of approximately of 408m² per residential unit. This results in a breach of 92m² per residential unit associated with the existing title. However, the existing residential activity is concentrated in a single terraced building situated close to one arm of Albertson Avenue with a large open space over the balance of the land. It is noted that the proposal will not change the situation of three of the residential units associated with the site, in terms of the physical occupation of the land.
- [44] The new residential lot will be located in replacement of the large and underutilised yard associated with the residential unit at 63 Albertson Avenue. While this is considered to be the rear yard for the residential unit, it is noted that it has north facing street frontage and provides for a logical plan of subdivision.
- [45] The subdivision of a portion of the rear yard will not result in detrimental effects that are minor or more than minor on the residential unit at 63 Albertson Avenue. It will continue to benefit from the existing driveway access, have an extensive north facing section and a significant amount of amenity open space as a result of being located on the corner and having the benefit of the road reserve areas.

- [46] There are no identified physical limitations that would prevent the subdivision and future development of the site. The proposed subdivision scheme is considered to provide a reasonable layout in regards to the lot sizes and dimension in context with the surrounding area.

Easements (18.6.1(i))

- [47] The current title is subject to Part IV A Conservation Act 1987 and Section 11 Crown Minerals Act 1991. The application has not proposed to amend or remove any of these interests and they will be required to be carried down onto any newly created titles. The existing interests on the title are not considered to have any impact on the proposal.
- [48] Council infrastructure, including water and wastewater, is available in the road reserve of Albertson Avenue with Lot 1 able to connect to these services without the services crossing Lot 2. However, a standard condition will be included on the approved consent requiring any easements for services, including private drainage, to be included during the survey then those easements and included in a Memorandum of Easements on the cadastral dataset.

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

- [49] The Consents Officer, Water and Waste Services Business Unit, has considered the application. She notes that Water, Waste Services Business Unit has recommended conditions for the consent in the event that it is granted. These conditions relate to the provision of services associated with the newly created lot.
- [50] Concerns were raised in regards to the non-compliance of the minimum site area. However, it was acknowledged that the potential future zoning of the site would allow for the proposed density and there is sufficient capacity of the surrounding services to support the proposed density.
- [51] It was noted that there is no proposed changes to the existing service provided to the four residential dwellings, with the proposal resulting in one additional residential activity.
- [52] Subject to compliance with recommended advice notes, the adverse effects of the proposal on the City's reticulated infrastructure are considered to be no more than minor. Standard advice notes will be included on the any approved consent in regards to establishing new connections for proposed Lot 1.

Transportation (18.6.1(c))

- [53] The application was forwarded to Council's Transportation Operations department for comment. The Transportation Planner is satisfied that the adverse effects of the activity on the transportation network would be no more than minor, and has not recommended conditions for consent but has provided advice notes to be included on any approved decision.
- [54] There is no proposed change to the access provisions to the existing residential dwellings with legal access established and formed to Albertson Avenue. The proposed lot has 17.5m of road frontage to the north-western portion of Albertson Avenue which is more than sufficient to allow the creation of access at the time of future development.
- [55] The layout of the subdivision allows for a potential vehicle access to be established off the south-western boundary to provide access to the rear of the existing dwellings, if required in the future. This is considered practical and

there is no requirement for this access to be constructed at this stage as the dwellings have existing suitable legal and formed access.

- [56] The effects on the transport network as a result of the subdivision will be less than minor.

Hazards (18.6.1(t))

- [57] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance.
- [58] The assessment of the risk from natural hazards requires a combined assessment of:
- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
 - (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
 - (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*
- [59] The site is annotated in the Hazards Register as being subject to Hazard ID 10107 – Land Stability/Subsidence (Harbour Reclamation) and Hazard ID 11407 – Seismic/Liquefaction (Domain C).
- [60] The application was consequently considered by Council's consultant engineer, Stantec New Zealand Ltd. The Stantec Engineer advised that there were no identified concerns that would prevent the application from being issued from a hazard perspective. He further noted that the proposal was unlikely to cause stability issues on the subject site or adjoining properties.
- [61] Having regards to this assessment, it is considered that there are no significant risks from natural hazards that need addressing as part of this application.

Amenity Values, Bulk and Location and Visual Impact (8.13.3, 8.13.5, and 8.13.6)

- [62] The proposal will result in one additional residential lot. The lot will be of sufficient size and design to enable it to be developed in accordance requirements of the District Plan with the exception of the density requirements.
- [63] The proposed density will not appear out of scale with the surrounding area as it will make use of an underutilised corner section that has a significant rear yard associated with it. There are no proposed changes to the existing residential activities on site, which comply with the bulk and location requirements of the operative District Plan.
- [64] It is noted that the proposed new boundaries will intersect the existing shed and clothing line to the rear and side of the new lot. These structures will need to be removed prior to the issuing of the S224 Certificate. A condition of consent will reflect this requirement.
- [65] The surrounding area has residential units that have been developed close to the road frontage with large rear yards. The development of the new lot will

result in a similar development with the exception of the large rear yard which will not be visually apparent from the street.

- [66] Overall the effects of the proposal on the amenity of the surrounding area are less than minor due to the subdivision scheme being able to be developed in accordance with the requirements of the District Plan, except for the density requirement. This non-compliance will not result in an change in the visual impact from the road.

Cumulative Effects (8.13.13)

- [67] 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".

- [68] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [69] The approval of resource consents that allow development to be undertaken at a higher intensity than envisioned by the District plan has the potential to result in cumulative effects in regards to the provision of services and the amenity of the area. However, having regards to the existing environment at the subject site and locality, it is considered that sufficient evidence that the proposed density would not add to the existing effects such that the cumulative effects are more than minor. Future applications for activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time.

Proposed 2GP

- [70] The subject site is identified within the General Residential 2 zone of the proposed 2GP. While the minimum site size rule in the proposed District Plan is not operative, it is noted there are no submissions against the zoning of the property and locality in regards to minimum lot size. Nevertheless there are submissions on the wider provision for medium density housing in the city where the outcome could affect the zoning and suite of rule provisions that may emerge from the 2GP decisions.
- [71] In this instance, there are no applicable assessment rules at this time.

Effects Assessment Conclusion

- [72] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [73] Section 104(1)(ab) of the Act requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring

positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

- [74] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

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

- [75] Section 104(1)(b)(vi) of the Act requires the Council to have regard to any relevant provisions of the Dunedin City District Plan and the proposed 2GP.
- [76] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	The current development of the site has resulted in a large portion of the land being underutilised due to the existing layout. The proposal will create and promote a more efficient use of land resource and provide an additional residential lot to the housing stock of the Port Chalmers area.
Policy 4.3.1 Maintain and enhance amenity values.	
Objective 4.2.3 Sustainably manage infrastructure	
Objective 4.2.5 Provide a comprehensive planning framework to manage the effects of use and development of resources.	The proposal will maintain a good amenity value in terms of section size and useability with the site being flat and able to be developed to the fullest extent, being a corner property.
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	The proposal is for a residential development within a residential area and does not introduce any incompatible land use or development to the area. There is also sufficient capacity with existing infrastructure to support the additional residential lot created by the proposal.
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.10 Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	
	Overall it is considered the proposal is consistent with the Objectives and Policies of the Sustainability Section of the operative District Plan.

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	While the proposal will result in a new residential lot that is unable to comply with the density requirements of the District Plan, the lot will be of sufficient size to be able to be developed in accordance with the District Plan requirements. The amenity of the balance area is well established and will not be
Policy 8.3.1 Maintain or enhance the amenity values	

and character of residential areas.	degraded by the proposal. The ongoing maintenance of the surrounding residential amenity values will not be undermined. The proposal is considered to be consistent with this policy and objective.
Policy 8.3.4 Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	The proposal is unable to comply with the density requirements of the zone and therefore could be argued that it exceeds the design capacity of the existing infrastructure. However, research undertaken by Council Departments for the purpose of the 2GP has established the proposed density is able to be supported by the infrastructure in place. Therefore it can be considered that the proposal is in general accordance with the density requirements so as to not exceed the design capacity of the urban service infrastructure.

Subdivision Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 18.2.1 Ensure that subdivision activity take place in a coordinated and sustainable manner throughout the City.	The proposed subdivision will be able to sustain the future development of the newly created lot and will not impact on the surrounding areas activities or future development.
Policy 18.3.1 Avoid subdivisions that inhibit further subdivision activity and development.	There is sufficient infrastructure and capacity to provide to the newly created lot with no proposed changes to the servicing of the existing dwellings.
Policy 18.3.7 Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	The proposal is considered to be consistent with this objective and policies.
Objective 18.2.7 Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is being sustained.	Services are available within the road reserve of Albertson Avenue and conditions of consent will require connections be established to the newly created residential lot at the expense of the subdivider. It is considered the proposal is consistent with this objective.

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The proposal will not result in adverse effects on the transport network. This is due to the four existing dwellings having established legal and formed access and the only additional access required being associated with the newly created residential lot.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	This lot will be required to create access to a certain standard at the time of development, with advice notes to that effect included on the decision certificate.
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	Therefore it is considered that the

Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	proposal is consistent with the Transport Objectives and Policies.
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Proposed 2GP

- [77] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The proposal is considered to be consistent with the following 2GP objectives and policies:
- [78] **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods
- [79] The subject site has sufficient road frontage to ensure any future development will be able to create access to an acceptable standard and will not result in adverse effect on the transport network. There is no proposed change to the access that services the existing four dwellings on proposed Lot 2. It is considered the application is consistent with these objectives and policies.
- [80] **Objective 15.2.2 and Policy 15.2.2.1 (Residential Zones)**, which seek to ensure that residential activities, development, and subdivision activities provide high quality on-site amenity for residents
- The proposed subdivision scheme accommodates a density of residential activity anticipated by the plan. The proposal will ensure the existing residential units have sufficient area to ensure a suitable amenity level while allowing proposed Lot 1 to be developed in the future for a residential activity. Lot 1 has sufficient area to be able to be developed in accordance with the requirements of the District Plan or further resource consent will be required. Therefore, it is considered the proposal is consistent with the policies and objectives of the 2GP.
- [81] **Objective 15.2.3 and Policy 15.2.3.1 (Residential Zones)**, which seek to ensure that activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.
- [82] The proposal effectively fills in an area of underutilised yard space within an established residential area. The existing development does not conflict with the character of the surrounding environment and that anticipated by the Plan.
- [83] The objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed 2GP. While there have been no submission specifically concerned with the proposed change in density requirements and zoning of the area, provisions for medium density development remain subject to submission, and until decisions released on submissions there is no certainty as to the relevant plan provisions applicable to this site.
- [84] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with those provisions.

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

- [85] 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. Given its regional focus, the regional policy statement does not have a great bearing on the current application.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [86] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [87] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [88] As discussed above in the assessment of effects, it is considered that the adverse effect of the application will be no more than minor as the effects are largely internal to the site. External effects are limited to amenity impacts which will be less than minor as the development will be in keeping with the appearance of residential development in the immediate area.
- [89] Overall I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore the first 'gateway' test of Section 104D is met. Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104(1)(a) of the Act.
- [90] However, only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104(1)(a) of the Act. In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of the Dunedin City District Plan and the Proposed 2GP. This does not mean there must be no conflict with the policy provisions relevant. In order to be deemed contrary to an objective or policy provision, an application needs to be repugnant to the intent of the provision. Case law indicates that to pass this limb of Section 104D an application must not be contrary to the key objectives and policies relevant to the application, it need not be consistent with all the objectives and policies.
- [91] It is noted that in this instance, the proposal is assessed as being not contrary with the relevant objectives and policies of the Residential Zone, Transportation and Subdivision sections of the Dunedin City District Plan. While the application is unable to comply with the current density requirements of the plan, it is acknowledged a key reason for density requirements is to ensure development does not exceed a level of intensity that Council infrastructure can support. In this case, the infrastructure has sufficient capacity to support the proposed development. The layout and existing development of the site are such that the proposed subdivision and land use for an additional dwelling will not compromise the established amenity values of the zone. The proposed development is therefore considered to also satisfy the second 'gateway' test outlined by Section 104D.
- [92] In summary, the application passes both the threshold tests in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to

undertake a full assessment of the application in accordance with Section 104(1)(a) of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [93] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will not be more than minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [94] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [95] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to the Residential Zones, Transportation and Subdivision Sections of the Dunedin City District Plan and the Proposed 2GP.
- [96] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.
- [97] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [98] Case law has suggested 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.
- [99] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan. This is because the subject site is unusual in terms of its size, existing development and corner location at the junction of two arms of a road loop. Any risk of an undesirable precedent would be low. There has been no opposition expressed through the submissions process and the proposal is at least consistent with what is anticipated by the 2GP, even though the outcome of the new plan cannot be relied upon at this time. As it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.
- [100] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the operative District Plan.

CONCLUSION

- [101] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions.

DECISION

CONSENT DECISIONS

Subdivision SUB-2017-101

That pursuant to Section 34A(1) and 104B and after having regard to Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the subdivision of the land at 57-63 Albertson Avenue, Port Chalmers legally described as Lot 1 Deposited Plan 7074 (Computer Freehold Register OT9B/122), subject to conditions imposed under Sections 108 and 220 of the Act, as shown on the attached certificate.

Land Use LUC-2017-531

That pursuant to Section 34A(1) and 104D and after having regard to Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the continuation of the existing residential activity on an undersized lot being Lot 2 of subdivision scheme SUB-2017-101 at 57-63 Albertson Avenue, legally described as Lot 1 Deposited Plan 7074 (Computer Freehold Register OT9B/122), subject to a conditions imposed under Section 108 of the Act, as shown on the attached certificate.

REASONS FOR DECISION

- [102] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor.
- [103] The proposal is considered to be consistent with the key relevant objectives and policies of the Dunedin City District Plan and the Proposed 2GP.
- [104] The proposal is considered to be either consistent with or not contrary to the objectives and policies of the Regional Policy Statement for Otago.
- [105] As the proposal is considered likely to give rise to adverse effects that will be no more than minor, and will not be contrary with the objectives and policies of the District Plan, the proposal is considered to meet both 'limbs' of the Section 104D 'gateway test'. Consideration can therefore be given to the granting of consent to the proposal.
- [106] The proposal is considered to be a true exception for the following reasons: The subject site is a corner site with a significant portion of undeveloped land to the rear of four existing dwellings. Due to the unique layout of the property there appears to be a gap in the development of residential units on the land where the proposed new lot will be created.
- [107] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the Residential zone that the Dunedin City District Plan seeks to protect. Further, it is once again noted that the application would meet the density requirements of the proposed 2GP with no submission received objecting to the minimum lot sizes proposed in the area.

RIGHTS OF APPEAL

- [108] Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) A boundary activity, unless the boundary activity is a non-complying activity;

- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of "boundary activity", and refer to Section 95A(6) for definition of "residential activity".)

[109] For all other applications, in accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

[110] The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

[111] Any appeal must be served on the Dunedin City Council.

[112] Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

COMMENCEMENT OF CONSENT

[113] As stated in Section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

ENQUIRIES

[114] Please direct any enquiries you may have regarding this decision to Connor Marner whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Prepared by:



Connor Marner
Planner

14/3/18
Date

Approved by:



Alan Worthington
Resource Consents Manager

14/3/18
Date

Consent Type: Subdivision and Land Use Consent

Consent Number: SUB-2017-101 and LUC-2017-531

Purpose: The residential subdivision to create an additional lot and associated land use consent for continuation of the existing residential activity on an undersized lot being on the balance lot of subdivision scheme SUB-2017-101.

Location of Activity: 57-63 Albertson Avenue, Port Chalmers.

Legal Description: Lot 1 Deposited Plan 7074 (Computer Freehold Register OT9B/122).

SUB Lapse Date: 13 March 2023, unless the consent has been given effect to before this date.

LUC Lapse Date: LUC-2017-531 shall lapse 5 years from the date that the s223 certificate for SUB-2017-101 is issued.

Subdivision SUB-2017-101

Pursuant to Section 34A(1) and 104B and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council grants consent to the subdivision of land, subject to conditions below, imposed under Sections 108 and 220 of the Act.

Conditions

1. *The activity must be carried out generally in accordance with the plans entitled Lot 1-2 Being Subdivision of Lot 1 DP 7074 and the information in the application dated 13 October 2017 except where modified by the following conditions of consent;*
2. *Prior to certification of the cadastral dataset pursuant to Section 223 of the Resource Management Act 1991, the subdivider shall ensure the following:*
 - a) *If a requirement for any easements for services, including private drainage, is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the cadastral dataset.*
3. *Prior to certification pursuant to Section 224(c) of the Resource Management Act, the subdivider shall complete the following:*
 - a) *The portion of the existing garden shed and clothing line that extends over the proposed boundary of Lots 1 and 2 must be removed so that the structure is wholly contained within the boundaries of proposed Lot 2 or removed in its entirety.*
 - b) *An "Application for Water Supply" is to be submitted to Water Network Engineering Officer for approval to establish a new water connection to*

proposed Lot 1. Details of how proposed Lot 1 is to be serviced for water shall accompany the "Application for Water Supply".

- c) Upon approval by the Water Network Engineering Officer, the water service connection shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*

Land Use Consent LUC-2017-531

Pursuant to Sections 34A(1), 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council grants consent to residential activity being the continuation of four existing residential units on an undersized site, subject to the condition below, imposed under Section 108 of the Act.

Conditions:

- 1. The proposal shall be constructed generally in accordance with the plans and relevant details submitted with the resource consent application received by the Council on 13 October 2017.*

Advice Notes

1. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
4. The lapse period may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
5. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for any works involved in the subdivision.
6. Code of Subdivision & Development Requirements - Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
7. The installation and connection of a new water service to the existing public water reticulation system will be carried out after the Consent Holder has completed and submitted an 'Application for Water Supply' form to the Water and Waste Services Business Unit, as per the Dunedin City Council Water Bylaw 2011. The Consent Holder or their nominated AWSCI is encouraged to submit the 'Application for Water Supply' at an early stage in the development, following issue of the resource consent.
8. A quote for the required work must be obtained from an approved water supply connection installer (AWSCI). The list of AWSCI's, application form and the full

process can be found here <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>

9. All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
10. Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.
11. Certain requirements for building on Lot 1 may be stipulated via the building consent process and are likely to include the following points:
 - Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - Surface water is not to create a nuisance on any adjoining properties.
 - For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
 - As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.

Issued at Dunedin on 13 March 2018



Alan Worthington
Resource Consent Manager

North Arrow

Scale: 1:250

Drawn	Checked	Issued	Amendments

57-63 Albertson Ave 3/10/2017

Lots 1-2 being Subdivision of Lot 1 DP 7074

Anderson & Co
Resource Management Ltd
Dunedin. Ph 03 4790005

Lot 1
Proposed New Lot
300-325m2
(subject to survey)

Balance of Lot 1
DP 7074

Albertson Street

35.11

9.9

16.8

24.0

30.0

17.5

4.8

