



Report

TO: Hearings Committee

FROM: Shane L Roberts, Consultant Planner

DATE: 10 June 2016

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2015-443 / SUB-2015-78
380 SOUTH ROAD, DUNEDIN
APPLICANT: MS & JV LAMBERT

1 INTRODUCTION

- [1] This report has been prepared on the basis of information available on 10 June 2016. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2 DESCRIPTION OF PROPOSAL

- [2] Resource consent is sought to subdivide the site into eight Lots, five of these will contain residential units with the remaining three consisting of a single access Lot and two Lots utilised for car parking. Land use consent is sought to erect five residential units on the site. The residential units are modest two story, three bedroom buildings with a footprint of 55m². Two car parks are provided for each unit, as well as a single visitor park for the complex. A shared location for bicycle storage is also provided. Landscaping is proposed.
- [3] The proposed Lots, size and purpose are shown below:

Lot	Size	Purpose
Lot 1	196m ²	Residential Lot
Lot 2	183m ²	Residential Lot
Lot 3	202m ²	Residential Lot
Lot 4	209m ²	Residential Lot
Lot 5	196m ²	Residential Lot
Lot 6	278m ²	Access Lot in Common Ownership
Lot 20	25m ²	Parking Lot (to be amalgamated with Lot 2)
Lot 30	25m ²	Parking Lot (to be amalgamated with Lot 3)

- [4] A copy of the application, including plans of the proposed residential units, landscaping and scheme plan of subdivision, geotechnical report and Preliminary Site Investigation (PSI) is contained in Appendix 1 of this report.

3 DESCRIPTION OF SITE AND LOCATION

- [5] The site is located at 380 South Road and is legally described as Section 2 SO 23278 held in Computer Freehold Register OT15B/689.
- [6] The site has an area of 1314m².
- [7] The site is located at the western end of the Caversham 'village'.
- [8] The site is currently bare land and is generally flat. Access is currently obtained by a drop crossing at the eastern end of the site. The site is surrounded on the southern and western sites by the sweep of South Road and Barnes Drive. To the north is the South Island Main Trunk Line which is cut in below the site. Immediately north of the rail corridor is State Highway 1. To the east of the site is a block of shops and vacant Kiwirail land.
- [9] As is noted in the application and as raised by a submitter, the site has been used as a car park and to provide informal access to the rear of the adjacent shops.
- [10] The South Road boundary of the site is also the location of a transformer and utility cabinet.

4 HISTORY OF THE SITE

- [11] There is a quite comprehensive description of the history of the site contained in the PSI appended to the application, including a series of photographs and as such I adopt that for the purposes of this report. In summary the site has had a varied history with former uses including being the location of a store, railway purposes, legal road and of late an informal public car park. The site has a history of filling including potentially contaminated materials.

5 ACTIVITY STATUS

- [12] The subject site is zoned Residential 1 in the Dunedin City District Plan. South Road is classified as a District Road. South Road forms part of the Strategic Cycle Network, and Strategic Pedestrian Network, both defined in the Dunedin City Integrated Transport Strategy 2013.
- [13] Residential Activity is defined in the District Plan as:

"means the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papakaika housing if these are in the form of residential units. Residential Activity also includes:

(a) home occupation;

(b) childcare facility for up to and including 5 children;

(c) home stay or boarding house for up to and including 5 guests - provided that these are secondary to the permanent living accommodation."

A residential unit is defined in the plan as:

"... a building or part of a building which is self contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents..."

- [14] The proposal is considered to fall within the definition of Residential Activity. Resource consent is required as the proposal does not meet a number of rules in the District Plan.
- [15] Rule 8.7.2(i)(a) requires new residential activities (front sites) to have minimum front yards of 4.5 metres and other yards of 2.0 metres. For rear sites all yards are required to be 2.0 metres. The development has multiple yard breaches with none of the front sites having the required minimum front yards, and all Lots aside from Lot 3 having at least 1 or more 'other yard' not meeting the minimum standard.
- [16] Lots 2 and 5 breach the 63° height plane specified in Rule 8.7.2(ii) on the southern and eastern boundaries respectively.
- [17] Lots 1 and 2 breach Rule 8.7.2(vi) which requires an internal separation distance of at least 4.0 metres where the units do not share a common wall.
- [18] Rule 8.7.2(vi) requires new residential activities within the Residential 1 Zone to have a minimum site area of 500 m². As shown in the table in Section 2 of this report none of the Lots meet this requirement.
- [19] The development also requires consent in terms of the Subdivision Chapter of the Plan. As the development does not meet the minimum area and frontage provisions of the Residential 1 Zone (18.5.1(iii)(a)) the subdivision is a non-complying activity in terms of Rule 18.5.2.
- [20] In addition to the provisions of the District Plan the activity is also caught by the provisions of the *National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health* (NES).
- [21] Given the history of the site including uncontrolled filling the site is categorised as a HAIL site.
- [22] In terms of Regulation 8(4) (Subdividing or changing use) of the NES the subdivision is a permitted activity as the applicant has provided a PSI in accordance with requirements (a)-(d) of the NES.
- [23] In terms of Regulation 8(3) (Disturbing Soil) of the NES the applicant has chosen not to seek consent for earthworks. The permitted volume of earthworks in terms of the NES is no more than 25m³ per 500m². Additionally a maximum of 5m³ per 500m² may be removed from the site (per year). The implications of this are discussed below.
- [24] Overall the application is considered to be a **non-complying activity** pursuant to Rule 18.5.2 of the District Plan.

6 WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

- [25] 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 and the mitigation measures proposed.

- [26] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties. The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 2 May 2016.
- [27] Copies of the application were sent to the following parties with submissions closing on 31 May 2016:
- 373 South Road
 - 377 South Road
 - 377A South Road
 - 379 South Road
 - 383 South Road
 - KiwiRail
 - NZ Transport Agency
- [28] Four submissions were received by the close of the submission period. Two submissions were opposed and two submissions were neutral.
- [29] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2. Shao Fen Tran and Sy Ban Tran also provided supplementary information in the form of a short email and photographs on Sunday 29 May (still within the submission period).

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Tracy-Ann Hooper	Neutral	▪ Concerned about the impact of the proposal on the availability of on street parking.	No
NZ Transport Agency	Neutral	▪ The proposed activity could give rise to reverse sensitivity. ▪ Request a condition to mitigate against noise effects.	Yes
Shao Fen Tran and Sy Ban Tran	Oppose	▪ Concerned about the impact of the proposal on the availability of on street parking. ▪ Concerned about traffic safety due to location of access to the site. ▪ The site has provided informal access to the rear of the Tran's property, which will be lost. ▪ The height plan infringement from the proposed dwelling on Lot 5 will impact upon the amenity of the Tran's property.	Does not state
KiwiRail	Oppose	▪ Concerned the stormwater if not appropriately addressed could have adverse effects upon the Main South railway. ▪ Concerned at the potential reverse sensitivity effects. ▪ Seeks an acoustic report is undertaken. ▪ KiwiRail is unlikely to grant access to the rail corridor to allow for maintenance of planting along northern boundary. ▪ Proximity of Lots 3-5 to rail corridor could create a safety or trespass issue. ▪ No land use consent has been	Yes

		sought for earthworks. Earthworks could have an adverse effect on the rail corridor and should be addressed in the application. ▪ The application should be refused.	
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7 STAFF COMMENTS

- [30] A number of internal comments were received on the application. These are all attached in Appendix 3.
- [31] Water and Waste Services have provided comment on the application in a memorandum dated 8 October 2015. The memorandum notes the presence of existing services through the site. The memorandum also notes the need for stormwater and wastewater attenuation and that water supply and firefighting needs can be met. The memorandum contains a number of recommended conditions.
- [32] An earlier email to the applicant dated 24 March 2015 also provides useful context as it contains further detail as to the quantum of stormwater and wastewater attenuation required to be provided by the applicant.
- [33] Council's Urban Designer, Mr Peter Christos provided comment on the application. In summary Mr Christos notes that the site is prominent and therefore sensitive with regards to effects on streetscape and amenity. As such Mr Christos notes that the final landscape treatment is important and therefore a comprehensive landscape plan is conditional to consent. Overall it is the opinion of Mr Christos that the development will have less than minor negative impacts on amenity and streetscape values.
- [34] Transportation Operations have also commented on the application. Mr Grant Fisher has provided a memorandum in which he has reviewed the application and concluded the proposed development will have a no more than minor adverse effect on the safety/efficiency of the transport network subject to a suite of conditions. These conditions include ensuring site visibility is maintained from the access to the site as proposed, and that the access and parking areas are formed and laid out. Mr Fisher has also required the Bike Storage area to be covered and secure.
- [35] Council's consulting engineer, Mr Lee Paterson of MWH has provided comments on Hazards affecting the site including a review of the Geosolve Geotechnical Assessment which formed part of the application. Mr Paterson did not raise any issues that would warrant refusal of consent and noted the site had been filled. Mr Paterson included a number of recommended conditions of consent as a result of the filled nature of the site.

Mr Paul Heveldt of MWH also undertook a review of the Preliminary Site Investigation prepared by Environmental Consultants Otago Limited and concurred with the conclusions and recommendations of the report.

8 ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [36] 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.*

- [37] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.
- [38] There are no existing resource consents applying to the site.
- [39] The applicant has covered the permitted baseline in some detail. I agree with the applicant that a permitted activity could yield 2 residential units with a combined site coverage of 525m². This compares to the proposed 5 residential units with a site coverage of 275m².
- [40] The permitted baseline does provide a useful comparison when one considers the built form that could take place on the site as a permitted activity, as discussed above and in the application.
- [41] One aspect to consider is that the intensity of the residential activity proposed is not something I consider sits within the baseline. The proposal will allow for five families (or a potential 5 flats situation or a mix of both) where the permitted baseline only provides for 2 residential units. This brings with it additional effects in terms of increased vehicle movements, visitor movements and general social activity. In terms of the proposed activity, all of these elements of residential activity are occurring in close proximity to one another.
- [42] The applicant has also discussed at Page 14 the current 'traffic generation' in terms of the use of the site as an informal carpark. I am not convinced this is a useful comparison given it is debateable that the use of the site as a carpark is a lawfully established or a permitted activity within the Residential 1 Zone.
- [43] Overall I consider the permitted baseline is useful to the extent of the 'bulk' that could be constructed upon the site as a permitted activity, and the level of vehicle movements associated with such an activity. Aside from that I do not consider the permitted baseline provides assistance in determining the effects of the activity.
- [44] Given the application is for a Non-Complying Activity any assessment of effects is not bound by the provisions of the district plan. Accordingly, assessment is made of the following effects of the proposal:
- Sustainability
 - Bulk, Location, Design, Appearance and Amenity Values;
 - Transportation;
 - Provision for Stormwater, Water and Sewerage;
 - Hazards and Safety;
 - Earthworks and Land Contamination;
 - Noise and Vibration; and
 - Positive Effects;

8.1 Sustainability

- [45] It is clear from the information provided with the application that the site has been vacant for a considerable period of time.
- [46] Given the residential zoning of the site residential use is a sustainable use of the site, provided any adverse effects arising are avoided, remedied or mitigated.
- [47] The addition of five residential units to the neighbourhood could also contribute to the ongoing vitality and viability of Caversham.

8.2 Bulk, Location, Design and Appearance and Amenity and Character Values

- [48] The bulk of the proposed units is relatively modest, and as identified above, in terms of site coverage less than could be erected as a permitted activity.
- [49] The design and appearance of the proposed units is different to the existing built form in the Caversham / South Road area with most other buildings in the area dating from the 1930's or prior. Most buildings in the neighbourhood are generally built to the width of their frontage. In the case of residential buildings these tend to be set back from the street whereas commercial buildings fronting South Road are built to the Road boundary. As such there is a uniformity of development in the area.
- [50] The proposal introduces different built form to the area, being a more modern expression of a multi-unit residential development consisting of detached, flat rooved two story buildings. The plans supplied indicate the units will be a dark brown / grey colour with architectural detailing running vertically on the buildings.
- [51] The applicant has not provided any details as to what the buildings will be constructed of apart from stating they will be constructed of 'various materials'.
- [52] Each unit features a ground floor level deck to the north of the unit, with the exception of Lot 2 which has a deck to the west. The decks occupy the majority of the outdoor living space for all of the units. I note the units have less outdoor living space available to them than a complying development due to yard incursions.
- [53] It is noted by Mr Christos that the proposed density of development is reasonably consistent with the medium density character of the suburb. I agree with this assessment. Mr Christos has also concluded that the development will have less than minor negative impacts on amenity and streetscape values.
- [54] The applicant has provided some detail on landscaping, but has proposed to provide a detailed landscaping plan at later date, and has deleted aspects of the landscaping shown on the architectural drawings as lodged due to sightline visibility issues. Mr Christos has requested a detailed landscaping plan be required as a condition of consent.
- [55] The applicant has suggested the planting along Barnes Drive and South Road is 'screening'. This planting will be limited to a maximum height of 0.8m to provide for adequate visibility for vehicles exiting the site. Given the landscaping will be limited in height I consider the screening value of the landscaping to be somewhat overstated by the applicant. I do note larger

specimens will be planted along the Barnes Drive frontage which will provide improved screening, particularly for Lot 3.

- [56] Additionally the value of any landscaping is only as good as the ongoing maintenance of that landscaping. Should consent be granted conditions around the provision of a landscaping plan and provisions for ongoing maintenance should be imposed. The landscaping plan should also include how the responsibility for the landscaping in Lot 6 (shared lot) is to be managed.
- [57] I also note KiwiRail have raised concerns around the feasibility of ongoing maintenance of landscaping along the northern boundary. This is something the applicant should comment on at the hearing. Landscaping is proposed to soften the appearance of the proposed units but along the northern boundary may not be able to be maintained in the longer term. I also note the applicant wishes to plant some landscaping on KiwiRail land which is not likely to be feasible.
- [58] No submitters have raised any issues in terms of the density or appearance of the development, however the Trans have submitted the recession plane incursion by the unit on Lot 5 will impact on the provision of sunlight and privacy of their section. The incursion is a very small one and I do not consider the effect of the incursion to be more than minor.
- [59] The site has laid vacant for some time and is zoned for residential activity. The applicant has proposed a development that exceeds the density provisions of the plan by some margin which will result in an amenity for the future residents less than what is anticipated by the plan. It is admirable the applicant is seeking to provide affordable housing but no evidence has been supplied to demonstrate why this development is more 'affordable' than other options available; and why such compromises in terms of the density provisions of the plan are required to provide affordable housing. I consider this particularly relevant when potential reverse sensitivity effects have not been addressed.

8.3 Transportation

- [60] Transportation effects arising from the proposal need to be considered in terms of the effects upon South Road, and also the Rail corridor.
- [61] Transport Operations have reviewed the application, and as discussed above have not identified any significant issues.
- [62] In particular any traffic safety effects are considered to be of an acceptable nature. Site observations from Council staff indicate:

"...drivers negotiating the proposed access would have sufficient visibility to select safe gaps in traffic (with gap formation helped by the platooning of vehicles coming from the signalised Caversham Valley Road/Barnes Drive intersection). Similarly, motorists on the road are considered to have sufficient time to sight and react to residents/visitors utilising the proposed vehicle access."
- [63] The memorandum from Mr Fisher notes the reduction in visibility due to the establishment of buildings onsite from 58 metres to 44 metres. It is also noted no crashes relating to the operation of the access have occurred in the last five years.
- [64] The report also discusses parking and manoeuvring and considers these matters can be addressed by way of conditions. Conditions are also

recommended in relation to the ensuring visibility from the access is maintained as promoted in the application.

- [65] I note 2 submitters have raised the issue of parking. As discussed above 2 car parks per unit are provided, along with a visitor parking space. Mr Fisher considers visitor parking demand can largely be met on the site and has not raised any concerns with a lack of visitor parking.
- [66] One final matter that has been raised by a submitter (the Trans) and also mentioned by Mr Fisher in his report is the fact the subject site has been relied upon to provide access to the rear of the buildings adjoining the site. I agree with Mr Fisher that no evidence has been provided to show that the property at 378 South Road has any legal access over the property at 380 to access the rear of their site. Whilst this may be an inconvenience for the current owners of Number 378 South Road it is a private matter between the parties as opposed to a matter Council needs to adjudicate on.
- [67] KiwiRail have raised a number of points in their submission regarding potential effects from the proposal on the rail corridor.
- [68] The applicant has proposed landscaping along the northern boundary of the site for visual screening, privacy and noise attenuation. KiwiRail have indicated that the ongoing maintenance of this vegetation from the KiwiRail side of the boundary is unlikely to be permitted by KiwiRail. Given landscaping is an important part of the proposal the applicant should demonstrate the viability of such vegetation.
- [69] I also agree with the submission of Kiwirail that fencing is required along the northern boundary of the site to maintain a safe environment. In particular fencing should be of a nature that will prevent easy access to the rail corridor, for obvious safety reasons. Acoustic fencing in this regard may also help reduce noise effects from the rail corridor.
- [70] Kiwirail have also raised the issue of the risk of vehicles being inadvertently being driven from the 5 car parks along the northern boundary into the rail corridor. I would suggest some sort of heavy duty wheel stop or barrier to prevent this would be suitable in this regard and could be a condition of consent.

8.4 Provision for Stormwater, Water and Sewerage

- [71] With regards to these services I have discussed these individually below, however as an opening comment on this matter it would seem a considerable amount of wastewater and stormwater attenuation will be required on the site due to the limited capacity of existing services in the area. The applicant is proposing considerably less storage than has been identified as being required by Council Staff.
- [72] Water – Advice from Council Water and Waste staff is that the sites can be adequately serviced with reticulated water and additionally firefighting requirements can be met.
- [73] Stormwater – The applicant has provided some calculations regarding stormwater and is proposing that attenuation for a 20 minute design event duration is required. This is contrasted by the position of Council Water and Waste Staff who suggest a minimum of 12 hours storage is required. The applicant suggests (page 15) that a variety of options exist to achieve this including site specific tanks, a larger common tank or an open pond. Given the proposed site layout I would consider a pond option to be unlikely to be achieved on the site.

- [74] Additionally I note the applicant's calculations for hardstand and softstand areas are based on the proposed units and paved / sealed access areas being hardstand and the remainder of the site being softstand. The scheme plan provided to Council stamped 8 March 2016 also shows indicative areas for a closed storage areas (garden sheds) and paved bin stand areas, which presumably would be considered hard stand. As such these areas should be considered in any calculation of stormwater runoff.
- [75] Wastewater – The application has again proposed an attenuation device to be used to hold wastewater during times of peak flow. The applicant has not provided any calculations in this regards but suggests between 1000 and 3000 litres of storage would be required. Council staff have suggested a minimum of 24 hours wastewater storage for the total site.
- [76] Additionally Council staff have suggested there may be some difficulties in connecting to existing infrastructure in South Road and that a new manhole and wastewater sewer in South Road may be required in South Road for a distance.
- [77] Whilst there are no doubt potential engineering solutions to the above issues ideally the feasibility of these should be established by the applicant at the consent stage to ensure effects on the wastewater and stormwater networks in the area are minor (particularly because of the need to pass the section 104D test in the Act).
- [78] At this point I do not consider the applicant has established that adverse effects on wastewater and stormwater networks in the area will be adequately managed. It may be this can be addressed by way of conditions however the feasibility of this has not been established.

8.5 Hazards and Safety

- [79] Regarding Hazards, the site is not subject to any known natural hazards.
- [80] Regarding safety, given the proximity of the site to the rail corridor I consider it essential that some form of fencing is provided between the development and the rail corridor to remove the temptation (as best practicable) to access the corridor for obvious safety reasons. It may well be a fence designed with this in mind could also perform a noise attenuating function.
- [81] A fence may also address KiwiRail's additional concerns about items being thrown into the railway corridor. I note this is unlikely to be fully addressed as I am not sure how the applicant can control future behaviour of residents.

8.6 Earthworks & Land Contamination

- [82] The applicant has provided limited detail regarding the existing level of the site and the earthworks that will be necessary to provide a more level and stable building site including proposed retaining walls. It would seem considerable earthworks will be required to undertake the development, and in particular the installation of wastewater and stormwater attenuation tanks. As noted above the applicant considers attenuation for a 20 minute rainfall storm event is all that is necessary. Council staff are of a view that 12 hours storage is required. The difference in earthworks for these two volumes is considerable and no information has been provided to show if the provision of such a volume of storage is feasible on the site.
- [83] The applicant has not sought earthworks consent for the proposed earthworks. It is somewhat unusual in my experience not to seek consent for an aspect of a development but rather choose to address it at a later date. In particular

this means an effect arising from the proposal is not addressed through the current resource consent process.

- [84] KiwiRail have raised this point in their submission and I agree with them that all effects arising from the development should be addressed at the time of application. Earthworks from the development have the potential to affect the rail corridor and submitters should be able to make an assessment of these effects from the application. It should also be noted that whether or not earthworks require a consent they are an effect arising from the proposal that should be assessed in the application.
- [85] Regarding land contamination a Preliminary Site Investigation from Environmental Consultants Otago Limited was supplied with the application. The report concluded:
- Historical evidence of HAIL land use was found (landfill and migration of substances from adjacent land);
 - Sampling found that Polycyclic Aromatic Hydrocarbons (PAH) are present at a depth of 0.3 meters at one location on the site. This level does not represent a human exposure risk during the redevelopment;
 - With full coverage of structures, hardstand and a minimal amount of landscaped cleanfill, risk of direct exposure of site users would be minimised;
 - A soil management plan will be required if soil disturbance that exceeds the permitted activity limits in the NES is proposed during site redevelopment; and
 - There is a minimal potential for human exposure risk to contaminants at the site and thus the development might proceed as proposed.
- [86] In terms of the potential for vegetable gardening to be undertaken on the site the report notes there will not be any significant opportunity for recreational grassed space or vegetable gardening. I note no conditions have been recommended in this respect by either the PSI author or peer reviewer. I note both experts (Environmental Consultants Otago Limited in Section 7.1 of the report and MWH on page 2, para 4 of the review) make mention that the site will have full coverage of structures, hardstand and a minimal amount of landscaped cleanfill. This is not quite the case as from both an amenity perspective and also to minimise run off there will be 'green' spaces on the site. Given there is space available for vegetable gardening (albeit small) I consider any soil management plan for the site should indicate what measures will be put in place to ensure future residents are not unintentionally exposed to contaminants.
- [87] Given the applicant has expressly excluded earthworks from the application any future earthworks may also need land use consent in terms of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. In particular the proposed stormwater and wastewater attenuation tanks could result in earthworks to a depth that were not anticipated by the Preliminary Site Investigation undertaken by the applicant. This matter should also be addressed in any soil management plan – including where any potentially contaminated material will be disposed to.

8.7 Noise and Vibration Effects

- [88] The site is located in close proximity to two transportation corridors – the main South railway and State Highway 1. Both Kiwirail and the NZ Transport Agency have submitted on the issues of noise and vibration. Both submitters have requested that noise performance standards for interior rooms are a condition of consent, should it be granted. Kiwirail have also requested a noise criteria for outdoor spaces.
- [89] Additionally Kiwirail have also suggested that an acoustic report is undertaken to ascertain the specific mitigation measures required to meet the performance standards in their submission, as well as a design certificate to demonstrate performance with the standard is achieved.
- [90] I note in the further information request dated 6 November 2015 an acoustic report was requested by Council. The applicant considered such a request to be unreasonable and refused to supply the information.
- [91] The applicant has stated that double glazing and landscaping will address noise effects. Whilst double glazing can certainly offer some noise reducing properties it should be recognised this is only effective whilst windows are closed. As such it is general practice to couple double glazing with mechanical ventilation to ensure residents are not placed in the position of having poor ventilation to reduce noise. This is the position of Kiwirail in their submission.
- [92] I also note the submission of Kiwirail stating that planting will have very little effect in mitigating noise.
- [93] With regards to outdoor areas the applicant is proposing a 'sound shield fence' of 1.2 metres in height around the decks on Lots 3, 4 and 5. The nature of construction and the factor of noise reduction provided by the fence is not stated aside from a diagram in the application (Sheet 5). At 1.2 metres in height presumably the fence would provide little attenuation for any standing adult.
- [94] I also note the applicant offered to enter into a reverse sensitivity covenant with Council to address this issue (Page 7 Para 1 of the response to Council's Further Information request). I am not convinced this is an appropriate response. I am also unclear if the applicant has discussed the matter with those in Council who would need to agree to such a covenant, or even if Council would agree to such a covenant.
- [95] KiwiRail have also identified the issue of vibration which would also be required to be addressed through the report from an acoustic specialist.
- [96] Reverse sensitivity is explained well in the submission of KiwiRail:

"Reverse sensitivity describes the effect that development of one kind may have on activities already in an area. It usually results from the people involved in a newly established activity (including new owners and occupiers as well as alterations and additions to existing activities and structures) complaining about the effects of existing activities in an area. This can have the effect of leading to the restriction on the operation of established land use such as the rail corridor by seeking for example limitations on train speed, lesser axle loads, hours of operation and maintenance. The primary reverse sensitivity effects arising for rail are noise and vibration effects. However, other relevant matters include glare, discharge of storm water onto the rail corridor, building and vegetation encroachment, and trespass onto the corridor to maintain buildings or pass over the corridor."

- [97] In my experience it is far more desirable to address reverse sensitivity effects of a proposal rather than to expose people (i.e. future residents and their visitors) to those effects and tie their hands about complaining about them through a no-complaints covenant. Whilst I note there are instances of such covenants being entered into in the City I do not consider that to be an appropriate response in this instance.
- [98] In the absence of any expert noise evidence, and the position of submitters I am not convinced the noise effects on future residents and reverse sensitivity effects will be minor. This also needs to be considered in light of the density proposed by the development which is well in excess of what is permitted by the plan therefore exposing a higher number of potential residents to noise than envisaged by the Plan. I consider this makes the issue of addressing reverse sensitivity an even more pertinent consideration for the applicant. Should consent be granted I consider the suite of conditions as suggested by KiwiRail being an appropriate response with respect to the internal spaces of the residential units. I am concerned specifying a maximum noise level for the outdoor areas of the property is setting the applicant up to fail as the applicant has far less options available to attenuate noise in an outdoor setting. I note there is no noise information provided with the application but it could be conceivable the background outdoor noise level at the site already exceeds the limit suggested by KiwiRail. Simply imposing KiwiRail's suggested conditions without an understanding of the existing noise environment is not an appropriate response without evidence that it can actually be achieved. I would also suggest that potentially different levels of noise attenuation will be required depending on the location of the units on the site. Furthermore given the small nature of the proposed lots I consider it essential the limited outdoor space available to residents is pleasant from an amenity perspective. Noise attenuation may be required to achieve this. I note any noise from the rail corridor is likely to be on a more intermittent nature (passing trains) as opposed to noise from the State Highway which is an ongoing part of the noise environment at the site.
- [99] As such I consider the applicant has not demonstrated that noise effects will not impact upon the amenity of future residents in a way that is less than minor.

8.8 Positive Effects

- [100] It is commendable that the applicant is seeking to utilise a section that has lay vacant for a number of years for affordable housing (noting that no information to quantify the affordability of the proposed units has been provided). Additionally the proposed development will provide for the ongoing vitality and viability of the retail area in Caversham through the residents of the development.

8.9 Effects Assessment Conclusion

- [101] Whilst I accept that it is common practice, and particularly in the case of subdivision, for some aspects of a proposal to be addressed by the way of 'plans and specifications' to be submitted to Council as part of the Section 223 /224 for approval. In this instance with regard to a number of key effects, particularly those relating to earthworks, servicing, and landscaping of the proposed development are items the applicant wishes to address 'later'. There may also be the need to seek additional resource consents to facilitate the development. Regarding noise the applicant is of the opinion the need to provide information on this matter as requested by Council as unreasonable. Given two submitters have also raised the issue of reverse sensitivity (particularly around noise) this remains an outstanding issue. Whilst the

applicant has addressed some effects to demonstrate they are of a minor nature a number of others remain unresolved.

- [102] After considering the likely effects of this proposal above, overall, I consider there is insufficient information to determine the adverse effects of the proposal are no more than minor.

9 OBJECTIVES AND POLICIES ASSESSMENT

9.1 Assessment of Objectives and Policies of the Operative District Plan (section 104(1)(b)(vi))

- [103] Section 104(1)(b)(vi) of the Act requires the Council to have regard to any relevant provisions of the District Plan.
- [104] The following objectives and policies of the 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. Policy 4.3.1 Maintain and enhance amenity values.	Given the current vacant nature of the site I consider the introduction of built form onto the site will contribute to enhancing the amenity values of Dunedin and is therefore consistent with Objective 4.2.1 and Policy 4.3.1.
Objective 4.2.3 Sustainably manage infrastructure Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	It is clear that there are infrastructure limitations at the site. Unless suitable volume of stormwater and wastewater attenuation is provided by the applicant. At this point despite advice from Council the applicant is not seeking to provide infrastructure services of an appropriate standard. Therefore I consider the proposal contrary to Objective 4.2.3 and Policy 4.3.5.

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. Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	The proposed development represents a density of development that is not provided for in the plan. It will have an impact on the amenity values and character of the neighbourhood however it is the assessment of Council's expert in such matters, Mr Christos, that these effects are less than minor. This is subject to the provision of a comprehensive landscaping plan. I agree with Mr Christos and consider the proposal to be consistent with Objective 8.2.1 and Policy 8.3.1.

Policy 8.3.4 Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	It is clear that the proposed density of development will exceed the design capacity of wastewater and stormwater networks in the area. The applicant has proposed measures to mitigate against overloading the design capacity of these networks however these fall well short of the expectations of Council Staff in this regard. As such at this point in time I do not consider the effects on infrastructure arising from the development can be mitigated to the degree that the development does not exceed the design capacity of the urban service infrastructure. The feasibility of providing foul sewer and stormwater attenuation onsite to the level required by Council has not been demonstrated by the applicant. As such I consider the proposal is contrary to Policy 8.3.4.
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Subdivision Activity Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 18.2.6 Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The infrastructure networks of the city are an existing physical resource. The proposed development has the potential to adversely impact upon these resources unless appropriate mitigation in the form of wastewater and stormwater attenuation is provided. At present the applicant is not proposing to provide the necessary infrastructure within the subdivision to avoid, remedy or mitigate the adverse effects of land use in the form of overloading of Council infrastructure.
Objective 18.2.7 Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	As such I consider the proposal to be contrary to Objectives 18.2.6 and 18.2.7
Policy 18.3.4 Subdivision activity consents should be considered together with appropriate land use consents and be heard jointly.	The applicant has chosen not to seek consent for earthworks associated with the development but would rather seek them later. As such I consider the application to be contrary to Policy 18.3.4.
Policy 18.3.5 Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	At this point in time the applicant has not supplied Council with sufficient information for me to consider the physical limitations of the site in terms of servicing can be met and that foul effluent disposal and stormwater attenuation can be provided to avoid impacting upon adjoining land.
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.	On this basis I consider the proposal to be contrary to Policies 18.3.5, 18.3.7 and 18.3.8.
Policy 18.3.8 Control foul effluent disposal and adequately dispose of stormwater to	

avoid adversely affecting adjoining land.	
Policy 18.3.12 Require plans of subdivision to be in accordance with safe traffic engineering principles.	Based on the mitigation measures promoted by the applicant, and the advice of Mr Fisher, I consider the proposal to be consistent with Policy 18.3.2.

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.	Based on the mitigation measures promoted by the applicant, and the advice of Mr Fisher, I consider the proposal to be consistent with the relevant objectives and policies of the Transportation Section of the plan with regards to the traffic generated by the development and the effect this will have upon transportation networks. With regards to reverse sensitivity effects I do not consider the mitigation measures as proposed by the applicant mitigate against the potential for reverse sensitivity effects to arise. As such I consider the proposal is contrary to Objective 20.2.2 and 20.2.4 in terms with regards to reverse sensitivity effects.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
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.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	

Environmental Issues Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	Two submitters have raised the issue of potential reverse sensitivity effects arising from the subdivision and resultant land use. The applicant has suggested double glazing will be sufficient to mitigate against noise effects but has not provided any evidence to support this. Both submitters have requested conditions are imposed to address this issue and one submitter has requested an acoustic assessment is undertaken. In the absence of any evidence on the matter I am not satisfied that the noise mitigation as suggested by the applicant can protect the future residents on the site from noise. Further to this I am not convinced the no complaints covenant between Council and the applicant as proposed is an appropriate mechanism to deal with the reverse sensitivity effect. As such I consider the proposal to be contrary to Policy 21.3.3.

9.2 Assessment of Objectives and Policies of the Proposed District Plan (section 104(1)(b)(vi))

- [105] The Proposed Plan was notified on 26 September 2015.
- [106] At the time of the issuing of this recommendation, no decisions have been made on the proposed Plan and are subject to submissions and could change as a consequence of the submission process. Accordingly, the objectives and policies of the Proposed Plan must be had regard to in accordance with Section 88A(2) of the Act.
- [107] As such I have made a brief assessment of the relevant Objectives and Policies of the Proposed Plan

Network Utilities and Energy Generation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 5.2.1 Network utilities activities, including renewable energy generation activities, are able to operate efficiently and effectively, while minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and, where located in an overlay zone, scheduled site, or mapped area, meeting the relevant objectives and policies for those areas.	As discussed above, the some of the network utility infrastructure in that will service the site is at capacity. As such, without sufficient attenuation this infrastructure will not be able to operate efficiently and effectively. As such the proposal is contrary to this objective.

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 15.2.1 Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facilities, and commercial activities that support the day to day needs of residents.	Noting the site is zoned Residential 2 in the Proposed Plan the development is clearly consistent with Objective 15.2.1 In terms of Objective 15.2.2. and Policy 15.2.2.1 it is clear the proposal provides a degree of onsite amenity however given the nature of the site and surrounds, particularly the noise environment I do not consider that the proposal provides for high onsite amenity having regard to the proposed noise mitigation measures. Certainly measures can be put in place to improve the internal noise environment of the site as raised by submitters. I note the proposal provides functional and accessible outdoor living spaces though I do have some concerns the outdoor area of Lot 2 may have a reduced amount of sunlight, particularly in the winter months.
Objective 15.2.2 Residential activities, development, and subdivision activities provide high quality onsite amenity for residents.	
Policy 15.2.2.1 Require residential development to achieve a high quality of onsite amenity by: - providing functional, sunny, and accessible outdoor living spaces that allow enough space for onsite food production, leisure, and recreation; - having adequate separation distances between residential buildings;	

c. retaining adequate open space uncluttered by buildings; and d. having adequate space available for service areas.	In terms of amenity on surrounding properties (Objective 15.2.3 and Policy 15.2.4.6) Mr Christos has commented on this and considers these effects are less than minor. Given the above I consider the proposal is by a narrow margin consistent with the Objectives and Policies in the Proposed Plan relating to Residential Zones.
Objective 15.2.3 Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	
Policy 15.2.4.6 Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a. maintain the amenity of the streetscape b. reflect the current or future intended character of the neighbourhood; c. provide for development to occur without unreasonable earthworks or engineering requirements; and d. provide for quality housing.	

- [108] As the Proposed 2GP is not sufficiently far through the submission and decision-making process, the objectives and policies of the operative Dunedin City District Plan have been given considerably more weight than those of the Proposed 2GP in my analysis below.
- [109] Having assessed the objectives and policies individually I am now required to make an assessment as to how the proposal fits in an overall sense, with the objectives and policies of the plan. In particular the key objectives and policies are those relating to the residential zone, subdivision and environmental issues of the Operative District Plan.
- [110] Turning first to the nature of the proposed development the proposal exceeds the density provisions of the plan by a considerable margin. Notwithstanding this no submissions were received on the issue of density having an impact on the amenity or character of the area. Additionally Council's urban designer has no concerns over the density of development. At the very least the proposed development will enhance the amenity of the area (Objective 8.2.1 and Policy 8.3.1) to a slight degree through the construction and landscaping of a site that has laid vacant for some time.
- [111] In terms of the infrastructure required to service the development the proposal is clearly consistent with the Transportation Objectives and Policies of the plan when considering traffic generation effects as any adverse effects upon the transportation network can be avoided, remedied or mitigated. However the proposal is also contrary to these objectives and policies with regards to reverse sensitivity effects – particularly Objective 20.2.2 and 20.2.4 – this is because the application currently does not in my view provide sufficient protection for future residents from noise effects. This in turn leaves existing activities in the area (particularly the rail corridor) vulnerable to complaints and resultant restrictions.
- [112] Similarly the application does not provide for protection for people and communities from noise that could impact upon their health, safety and amenity (Environmental Issues Policy 21.3.3).
- [113] In terms of the subdivision activity section of the plan the proposal has not demonstrated that it can mitigate against effects on the city's physical resources (Objective 18.2.6 and Policy 18.3.8) and has not demonstrated necessary infrastructure can be provided (Objective 18.2.7, Policies 18.3.5 and 18.3.7) to avoid, remedy or mitigate against all adverse effect of land use.

- [114] In terms of the proposed plan (noting it carries little weight) the proposal is contrary to the relevant network utility objective but consistent with the relevant objectives and policies for Residential Zones.
- [115] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is contrary to those provisions.

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

- [116] 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. However, Chapter 5: Land is relevant in that it seeks to promote sustainable management of Otago's land resources.
- [117] Objective 5.4.2 seeks to avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.
- [118] As discussed above the adverse effects of the activity on physical resources (existing infrastructure) have not been adequately avoided, remedied or mitigated. As such, the proposal is considered to be contrary with the relevant objectives and policies of the statement.

10 DECISION MAKING FRAMEWORK

10.1 Section 104D

- [119] 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.
- [120] I note it is generally undesirable to 'paper over' deficiencies in an application with the imposition of conditions, particularly when the conditions require the provision of information associated with the avoiding, remedying or mitigating an adverse effect.
- [121] In terms of the current application the applicant is relying upon landscaping to screen the development but has provided little actual detail as to how this will be achieved and will instead provide this information at a later date.
- [122] The applicant has also proposed considerably less attenuation of stormwater and wastewater than suggested will be necessary by Council staff. Whilst a simple option would be to 'condition' the consent to the effect that suitable storage (as requested by Council) be provided, I am reluctant to do so when the provision of such storage will require a considerable amount of earthworks– this is particularly relevant when having regard to the decision of the applicant not to apply for the necessary earthworks associated with the development. The increased volume of earthworks brings with it a number of adverse effects that require consideration – particularly when the site is known to have been subject to uncontrolled landfilling. This was also the position of KiwiRail. Further to this whether the activity is permitted under the NES has not been established by the applicant.

- [123] The potential for reverse sensitivity effects also remains unresolved as no evidence has been provided to establish that double glazing and vegetation as proposed by the applicant will provide adequate noise mitigation. This is certainly the position of 2 submitters.
- [124] When one considers integrated decision making is at the heart of the Resource Management Act I am concerned that at this point a number of matters remain unresolved in order to determine the effects of the proposal are no more than minor.
- [125] That said, I do not believe the above matters are insurmountable and the hearing provides an opportunity for the applicant to address these matters. In particular residential use of the site, is in my view an appropriate use for the site, provided adverse effects can be avoided, remedied or mitigated.
- [126] As discussed above in the assessment of effects, it is considered that insufficient information is available to determine if the effects of the proposal are no more than minor, in particular with regards to the provision of infrastructure and reverse sensitivity. Therefore I consider the application does not pass the first 'gateway' test of Section 104D.
- [127] 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 District Plan. As concluded above, the proposal is considered in an overall sense to be contrary to the objectives and policies of the plan, in particular due to the position of the applicant to only provide for limited noise attenuation and stormwater attenuation significantly less than that requested by Council. I therefore consider the application also fails to also satisfy the second 'gateway' test outlined by section 104D.

10.2 Conclusion

- [128] I consider the application, as it stands, passes neither of the threshold tests in section 104D of the Act and therefore, in my opinion, the Committee cannot undertake a full consideration of the application in accordance with section 104(1)(a) of the Act.
- [129] I do believe the application has some merit, however it is clear the site has some limitations which the applicant needs to address more fully. At this point in time I do not consider sufficient information has been supplied to demonstrate these issues have been addressed in a manner required by the Act.

Report prepared by:



Shane L Roberts
Consultant Planner

10 June 2016

Date

Report checked by:



John Sule
Senior Planner

10 June 2016

Date