

TO: Hearings Committee

FROM: Darryl Sycamore, Planner

DATE: 20 February 2017

SUBJECT: **LAND USE CONSENT APPLICATION**
LUC-2016-481
1069 HIGHCLIFF ROAD
PUKEHIKI

1. INTRODUCTION

- [1] This report has been prepared on the basis of information provided in the application received on 10 October 2016, along with submissions and technical comments from Council representatives. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the applications using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2. DESCRIPTION OF THE ACTIVITY AND WIDER ENVIRONMENT

- [2] Resource consent is sought to establish a residential unit and accessory buildings on the property at 1069 Highcliff Road, Pukehiki. The subject site is legally described as Lot 2 Deposited Plan 306650, Computer Freehold Register 25979 and comprises 8.28 hectares (ha).
- [3] The subject site is zoned rural in the Dunedin City District Plan (the Plan) and occupies the lower south-west slope of Peggy Hill, and is located east of, and adjacent to the Pukehiki settlement (see Figure 1). It is an irregular shaped site with some frontage to Highcliff Road. The northern slope of the property contains the Peggy's Hill Conservation Area, a protected stand of remnant vegetation dominated by stunted podocarp species which occupies 1.78ha. A gully and watercourse forming part of the Robertson Creek catchment bisects the property towards Boulder Beach.
- [4] The subject site is surrounded by numerous other undersized rural lots and the Pukehiki settlement which is zoned Residential 5 in the Plan. The application includes a Location Plan detailing the proposed layout of the development including proposed landscaping.
- [5] The proposed dwelling will be modest in size, comprising approximately 130m² located along the 300m (asl) contour. It will be approximately 19m by 7m and 3.75m high. Cladding will be finished in colours sympathetic to the rural setting, including coloursteel, cedar and cement weatherboard. Unpainted timber will be stained.
- [6] To accommodate the dwelling access, some excavations will be required. A building platform approximately 30m by 17m will be constructed. Some retaining structures may be constructed although none will exceed 1.2m in height.

- [7] A new farm shed is also sought as part of the proposal. It will be set towards the lower western boundary, and comprise approximately 102m².
- [8] The application includes plans titled Development Concept Plan which details the siting of the dwelling and shed, and the landscaping layout. A driveway will traverse the lower portion of the site which will be located immediately upslope of existing vegetation. Significant landscape planting comprising mostly native species will be carried out around the proposed new bulk.
- [9] A Landscape Assessment by Mike Moore and a Geotechnical Assessment by Jon Lindqvist is provided with the application. Those reports assessed the effects and mitigation, and conclude the application is consistent with the relevant provisions of the Plan and Proposed 2GP.
- [10] The site adjoins a separate rural property at 1075 Highcliff Road, held is a separate title. That property comprises approximately 11ha and includes residential activity. The applicant is a co-owner with both the subject site and the adjoining property at 1075 Highcliff Road. Together, the two properties comprise 19.5ha and currently operate in unison.
- [11] The application refers to the dissolution of a relationship as the catalyst for the application. One party will retain ownership of 1075 Highcliff Road and the other will take ownership of the subject site.

3. ACTIVITY STATUS

- [12] Dunedin currently has two district plans: The Dunedin City District Plan and the Proposed Section Generation Dunedin City District Plan (the Proposed Plan). The Proposed Plan was notified on 26 September 2015 and is currently proceeding through the public process of becoming the operative plan. Until the rules of the Proposed Plan become operative, the current District Plan remains the operative plan. Where the rules of the Proposed Plan have been given effect, the provisions of both plans need to be considered.
- [13] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.
- [14] The subject site is zoned **Rural** in the Dunedin City District Plan. It is also within the Peninsula Coast Outstanding Landscape Area (PCOLA). The Hazards Register shows the western edge of the subject site to be subject to **10127** and **11407**, both relating **Land Stability (land movement)**.
- [15] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity, provided that the minimum area of the site is no less than 15ha. The site is approximately 8.3ha. Accordingly, the residential activity is considered to be a **non-complying** activity pursuant to Rule 6.5.7(i).
- [16] The application seeks to establish a dwelling and farm shed within the PCOLA is a **restricted discretionary** activity pursuant to Rule 14.6.1(b).
- [17] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to acceptable use of the site. The proposed dwelling will be 12.5m from the boundary against 1075 Highcliff Road. The farm shed will be approximately 30m from the front boundary with Highcliff Road and also 11m from the boundary with 1075 Highcliff Road.

The Proposed Plan (2GP)

- [18] The subject site is split zoned, where the bulk of the site is zoned **Rural – Peninsula Coast**. A smaller area along the upper portion of the site is zoned **Rural- Hill Slopes** in the Proposed Second Generation Plan. It is a **Wahi Tupuna Site 41**, is set within

the **Peninsula Coast Outstanding Natural Landscape** in terms of the current 2GP definition. The site includes the **Peggy's Hill Conservation Covenant – Area of Significant Conservation Value C065** near the upper extent of the property.

Land Use Activity:

- [19] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. Rule 16.5.2.1(a) specifies residential activity on a rural site in the Rural – Peninsula Coast zone requires 20ha of land to be a permitted activity. Therefore, the residential activity is considered to be a **non-complying** activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

Development Activity:

- [20] Rule 16.6.11.1(a) specifies that residential buildings are to maintain 20m setback from road boundaries, and 40m setback from neighbouring boundaries. Both the proposed dwelling and farm shed will breach these setback distances in accordance with the above discussion regarding yard spacing under the District Plan. Any development proposal which does not meet all the performance standards of the Proposed Plan is considered to be a restricted discretionary activity pursuant to Rule 16.3.2.13.

Overall Proposed Plan Status:

- [21] Having regard to both the land use and development activity components under the Proposed Plan, the land use proposal is considered to be a non-complying activity.
- [22] The application was lodged on 23 September 2016, after the close of submissions on the Proposed Plan. Accordingly, the Proposed Plan rules are not relevant to the activity status of the application as determined at the time of lodgement.

4. NOTIFICATION & SUBMISSIONS

- [23] No written approvals were submitted with the application. The application anticipated consideration via the public notification pathway.
- [24] The application was publically notified on 29 October 2016. Five parties were considered to be potentially affected by the proposal and received a copy of the application for their consideration. The closing date for submissions was 25 November 2016. Eleven submissions were received following the notification of the application. Ten parties were opposed to the development, one was in support. A summary of the submissions are contained below, with the full submissions being in Appendix B of the agenda.

Name	Position	Reason for Position	Wish to be heard?
Save THE Otago Peninsula (STOP) Inc Soc	Oppose	• Holds the view that the effects will be more than minor. • STOP does not accept the 'exception' argument promoted in the application and suggest the proposal will create a precedent. • Holds the view that further residential activity is incompatible with the Outstanding Landscape Area values. • The submitter is opposed to the proliferation of residential activity on undersized rural sites. Requests: • Seeks that consent be declined.	Yes
Norcombe Barker for Larnach Castle	Oppose	• Suggests the rural nature of the peninsula is in continued decline. • Holds the view that one private individual	Yes

Limited		should not be able to benefit, in terms of increased property value, and the expense of others. - States the proposal does not meet the landscape character requirements for the zone. Requests - That the application be declined.	
Norcombe Barker	Oppose	- The submitter states the cumulative effects from further development will permanently affect the character of the Peninsula. - States the proposal is contrary to the intent of the District Plan. Requests: - That consent be declined.	No
Craig Werner	Oppose	- States the effects analysis is unsupported by evidence. - Is concerned with precedent and cumulative effects. - The submitter is concerned about visual effects and the implications on the landscape. - Is opposed to density breaches. Requests: - That consent be declined.	Yes
Quentin & Michael Furlong	Oppose	- States the dwelling will be prominent on Peggy's Hill where few other dwellings are visible. - States the Council's long term planning indicates a clear path for residential activity in the area. - Is concerned about precedent effects and proliferation of residential activity within the Outstanding Landscape Area. - Holds the view the reason for the development relating to personal circumstances should have little weighting in the RMA assessment. - Notes the overall property is held in two registers that together make up a complying site. The submitter's state by allowing residential activity on the subject site, it will effectively create two undersized rural properties. Requests: - That consent be declined.	Yes
Michael de Lange	Oppose	- Is concerned about precedent. - Seeks the management of urban development in the peninsula. - States the dissolution of a relationship has little bearing on a RMA decision. Requests: - That consent be declined. - Seeks that the 15ha residential activity limited should be enforced.	Yes
John Wells	Oppose	The submitter states his property was one of a number of undersized sites referred to in the application to promote development on the subject site. He states the development on his property was prior to the inception of the	No

		District Plan and therefore little weight can be applied to that argument. • The submitter does not accept the dissolution of a relationship is valid in the RMA weighting. • Further development will affect the character of the Peninsula. • States the proposal is contrary to the intent of the District Plan. Requests: • That consent be declined.	
Hannah & Richard Lawrence	Oppose	• States the proposal will have a more than minor impact on the environment in terms of landscape effects. • The submitter states cumulative effect of further development is permanently affecting the character of the Peninsula. • States the proposal is contrary to the intent of the District Plan. • They hold the view that the residential activity could affect the Conservation Covenant on the property. • Is concerned about the impact on the value of the submitter's property. • Is concerned about precedent and further applications. Requests: • That consent be declined.	No
Lauren O'Brien	Oppose	• States her property was one of thirteen described as undersized in support of the property. She states her properties' boundaries were drawn up in 1900, and should not be used to circumvent the District Plan intent. • She states the justification of relationship dissolution should not negate the RMA. Requests • That consent be declined.	No
Gilbert & Lynn Samuels	Oppose	• States the application referring to thirteen properties within a kilometre are of similar size as the proposed development is irrelevant as they were developed prior to the District Plan taking effect. • States a change in personal circumstances is not a valid reason for granting consent. • Refers to other sections in the immediate area that are undeveloped and may use this application to promote additional development. Requests • That consent be declined.	Yes
Gerald Newbury	Support	• Mr Newbury submitted a submission on behalf of his son who is overseas who has land nearby. • The submitter states his son holds the view the development will not adversely affect the immediate area if consent is granted.	No

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

[26] The purpose of the permitted baseline test is to define the environment so as to gauge the level of effects of allowing the proposed activity. The baseline has been defined by case law as comprising the existing activities on the site and non-fanciful (credible) activities that comply with the provisions of the District Plan (i.e permitted activities). Section 104(2) of the Resource Management Act 1991 provides the consent authority with the discretion whether or not to consider the permitted baseline when assessing the effects of an application for resource consent.

[27] Within the context of the current application, I consider there is only a very limited baseline that will serve to narrow the matters relevant to the Committee's consideration of the application. As the site is zoned Rural and comprises approximately 8.28ha, the site provides no scope for residential activity without resource consent.

[28] Typically on a rural site, a landowner could establish a farm shed or barn as of right, provided it was within a scale commensurate with the site and used for rural activities. The additional landscape overlay further limits the ability to erect a structure. Considering the site size and topography, productive rural activity would be challenging, and by implication no structures could be permitted as of right.

[29] Overall, in my opinion there is little scope for the Committee to apply any permitted baseline to the application beyond those activities anticipated within the Outstanding Landscape Area.

[30] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7 and 18.6 of the District Plan:

- Bulk and Location of Buildings
- Amenity Values and Visual Impact
- Landscape Effects
- Hazards
- Provision of Services
- Transportation
- Residential Units and Cumulative Effects
- Sustainability
- National Environmental Standards
- Summary

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

Bulk and Location (6.7.9)

- [32] Residential activity on the site is a non-complying activity as the proposal does not meet the minimum size for residential activity within the rural zone, and therefore the performance criteria set out in Rule 6.5.3 do not apply. The performance standards do however provide some guidance as to acceptable use of the site.
- [33] The proposal seeks to establish a new residential unit on the 8.28ha site. Both the dwelling and farm shed will be sited along the lower extent of the property. Siting of the bulk has been designed such that the effects of new bulk is minimised, sitting within the existing residential activities along that contour profile.
- [34] The new dwelling will be located approximately 11m from the side yard boundary against 1075 Highcliff Road, the site co-owned by the applicant. It will be modest in size, comprising approximately 130m² located along the 320m contour. In terms of dimensions, it will be approximately 19m by 7m and 3.75m high. Cladding will be finished in colours sympathetic to the rural setting, including 'coloursteel', cedar and cement weatherboard. Unpainted timber will be stained. To accommodate the dwelling access, some excavations will be required to establish a 30m by 17m building platform. Some retaining structures may be constructed although none will exceed 1.2m in height.
- [35] The land rests on the boundary interface between the Residential 5 zone of the Pukehiki settlement and the rural zone proper. That said few of the rural sits nearby are of a complying size to accommodate residential activity as of right. Within a kilometre or thereabouts, many of the surrounding underdeveloped rural properties are typically smaller or of a similar dimension to the subject site.
- [36] Bulk and location provisions in the Rural zone relate to the intended use of the structure. For example, the minimum yard requirements for structures (accessory to farming activities) require a 20m front yard setback for all buildings. Minimum side and rear yard setbacks for residential units are 40m, buildings designed for housing animals are 12m and buildings other than for the housing animals require a minimum of 6m from the boundary. In this case, while the yard provisions are not met, the adjacent land associated with that breach is also owned by the applicant and any effects arising are considered irrelevant in terms of bulk.
- [37] Given the setting, and in terms of bulk and location, it is my opinion the proposed dwelling and farm shed will result in only minor effects on the environment as it will fit within the margin of the Pukehiki settlement. In terms of effects on the landscape, the proposal will create new effects which are considered in more detail below.

Amenity Values and Visual Impact (Assessment Matters 6.7.3 & 6.7.13)

- [38] The Resource Management Act 1991 defines 'amenity values' as:
"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes."
- [39] In a general sense, the character of rural land within the Dunedin City jurisdiction is dominated by pastoral farming from grassy lowlands to tussock high country. This has resulted in a low density of development and a sense of openness throughout much of the rural area within Dunedin. In this case, the site is a small rural property on the Otago Peninsula, within the Landscape Conservation Area.
- [40] In a general sense, the character of the site comprises rural land providing a defined separation between the urban Residential 5 zone and the adjoining rural environment.
- [41] The application offers insight of the dwelling and how it fits within the environment. While not exhaustive, the application confirms the dwelling will be single storied, natural materials of low reflectivity and in colours typically found in the rural landscape.

- [42] Amenity and landscape matters share a common relationship. It is my view that the proposed dwelling will not adversely affect the amenity to an extent that is more than minor. That position is also shared by the Council's Landscape Architect over the longer term, which is discussed in the section below. While the site is within the Landscape subzone, it is not reasonable to anticipate the site will remain undeveloped in perpetuity in terms of appropriately scaled rural buildings.
- [43] While non-complying by virtue of the Lot size, residential activity is not likely to contribute to a loss of amenity to adjoining landowners. A number of submitters raised concern at the proposal, specifically in relation to the site size. I accept their views, but recognise many surrounding properties are similarly dimensioned. I also note some concerns related to whether the breakdown of a relationship is a unique circumstance under s104D to justify a new residential activity on an undersized rural property. Other submitters expressed distaste at highlighting their property as undersized in order to promote the application when many of the sites referred to were historical or prior to the District Plan. These issues are discussed further in this report.
- [44] The rural zoning anticipate residential activity at a limited density of one residential unit per 15ha and the rule provisions for the Outstanding Landscape Area restrict but do not exclude dwellings in most circumstances. While the absence of residential buildings may contribute to the perceived amenity of the site as viewed by many submitters, the direction of the District Plan is fundamentally about managing the effects on structures and associated development. Overall, it is possible that amenity of the immediate or wider area for either building site may not be prejudiced by further residential activity. Overall, it is my view that residential activity will not lead to a loss of amenity that can be considered more than minor over the long terms.
- [45] With respect to the long term management of the proposed landscape plantings, it is my view that the vegetation on the slopes will probably contribute to the amenity at a wider level, contributing to the character of the urban margin between the Pukehiki settlement and rural zone.

Effects on Landscape (Assessment Matters 14.7.1-5)

- [46] The application was forwarded to Council's Landscape, Mr Barry Knox for his assessment of the proposal and how it relates to the PCOLA. Figure 2 below highlights the relationship of the site to the landscape area. The Dunedin City District Plan notes these following issues for protection in the PCOLA:
- *The general visual dominance of the natural landscape elements over human landscape elements (eg buildings or shelter plantings) giving the area a sense of maturity and harmony.*
 - *An apparently remote, isolated rural character.*
 - *The integrity, extent, coherence and natural character of the landform, streams and remaining areas of indigenous vegetation.*
 - *The minimal influence of any large scale structures or exotic plantings to diminish the impact of the natural landscape forms and features.*
 - *The dramatic coastal landforms and views.*
 - *The presence and quality of human-made features which are relics of the past, eg old lime kilns, stone walls.*
 - *Highlights of 'transient' wildlife interest, eg seals, penguins, etc.*
 - *Outstanding and dramatic landform features including the following which are included in the NZ Geological Society Geopreservation Inventory for the Otago Region:*
 - *Hoopers/Papanui inlets*
 - *the Pyramids*
 - *Sandfly Bay earthflow*
 - *Sandfly Bay lag surface and ventifacts*

- Sandymount sea arch
- Sandymount terracettes.
- The extent and quality of areas of remnant forest, eg Taiaroa bush.
- The significance of places which are special to Maori, eg Pukekura (Taiaroa Head), Pyramids, etc.

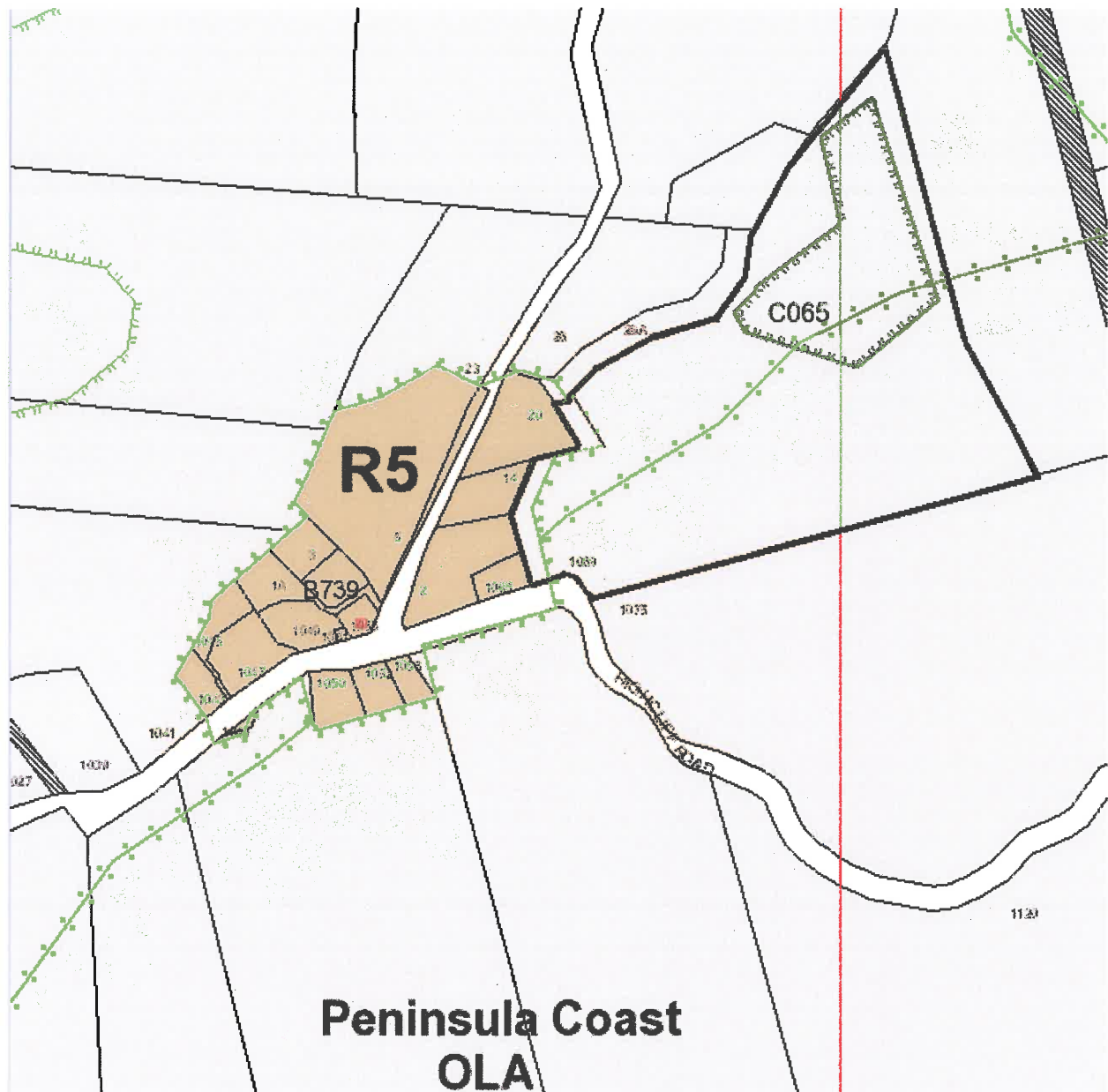


Figure 2- District Plan GIS Layer of Site (in black outline) and Wider Environment

- [47] Mr Knox noted the site is 8.3 hectares, where 15 hectares is required for residential activity. Mr Knox observed that proposed changes to the District Plan, being the Second Generation District Plan, requires a minimum site size of 20 hectares which would also render the application a non-complying activity. However the relevant rule provisions have not yet been given effect to or made operative, so no weighting on the rules has been applied in this assessment.
- [48] Mr Knox reviewed the Landscape Assessment Report prepared by Mike Moore, the applicant's Landscape Architect, which complimented the consent application. That assessment includes are a number of recommended mitigation measures would

complement the relatively modest scale of the dwelling to considerably reduce adverse effects and maximise integration, should the development proceed.

- [49] Mr Moore accepts the proposal introduces further domestication, but is of the opinion that it is not seen as inappropriate in terms of landscape effects in this setting on the edge of Pukehiki settlement which has other dwellings. Mr Moore noted that in his opinion the visibility would be low from significant public and residential viewpoints and adverse effects on landscape and visual values will be minor initially. This would improve as proposed plantings enhance the natural character values of the area.
- [50] Key mitigation proposed in the Moore report include:
- Buildings are finished in colours that blend with the background landscape;
 - All services are below ground;
 - Earthworks will be designed to blend into the contours;
 - The driveway will retain an informal rural character;
 - Water tanks will be obscured from view;
 - Fencing will be sympathetic to the setting i.e stacked rock;
 - Plantings in locally sourced indigenous species around the dwelling, shed and gully system.
- [51] It was the opinion of the Council's Landscape Architect that the proposal was a relatively modestly scaled new dwelling and farm shed. In his opinion effects on the values of the PCOLA, both in terms of the operative and proposed Plans, would be no more than minor after several years when accounting for the above mitigation measures. As with any mitigating landscape conditions, however, there is a time element, and initial adverse effects in this more elevated location could initially be minor to moderate until mitigation measures become more fully established.
- [52] As noted earlier, with landscape mitigation, effects on the values of the PCOLA are likely overall to be minor. The proposal would introduce human elements into an area which has a predominantly natural character, and further domestication will alter the site. Prior to establishment and maturity of proposed landscape planting mitigation, in my opinion initial adverse effects on the values of the PCOLA may be moderate, but would diminish in part over time.
- [53] Little impact is anticipated in terms of the area of significant conservation value, being the Peggy's Hill Conservation Covenant. Domestication will be predominantly to the lower portion of the site and the conservation covenant will remain generally as it is. Enhancement of native plantings, and ideally trapping programmes will limit pest plant and animal species with the intent of improving the covenant area.

Hazards (Assessment Matter 6.7.23)

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

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

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

- [55] There are no features of mapped landslide instability indicated on either the Otago Regional Council mapping or Dr Lindqvist's report that indicates that the proposed building area and access roads include no observable geotechnical risks.
- [56] With respect to the global geological setting, the property contains some steep slopes in excess of 15°. The area including proposed dwelling platform and land immediately downslope is nearly 20°.
- [57] Some earthworks will be required. A cut up to 2.5m deep and with some non-structural fill to the downslope edge of the building platform will be carried out. The application notes any earthworks will be less than 200m³ and will comply with the NZS 6803:1999 standard for construction noise. Mr Paterson considers there are no general potential instabilities of concern that may create or exacerbate issues on either the subject site or adjacent properties.
- [58] The Consulting Engineer recommended that the application not be declined on the basis of known natural hazards, but suggested a number of consent conditions for inclusion in the decision certificate should consent be granted. I have read and concur with his assessment.

Provision of Services (6.7.10)

- [59] The Consents Officer for the Water and Waste Services Business Unit (W&WWBU) reviewed the application and provided a number of comments. The site is not served by any Council infrastructure, and will therefore have to accommodate all services internally.
- [60] A review of the Council's GIS records indicates that the proposed subdivision is located within the Rural zone and located outside the Rural Water Supply Areas as shown in Appendix B of the *Dunedin City Council Water Bylaw 2011*. Consequently, no reticulated water supply is available to the proposed subdivision. Stormwater collected from roof surfaces may be used for domestic water supply and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.
- [61] As the proposed subdivision is located within the Rural zone, there are no reticulated wastewater services available for connection. All effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.
- [62] As the proposed subdivision is located within the Rural zone, there are no reticulated stormwater services available for connection. Stormwater from right of ways, roads, drives, drain coils and water tank overflows are not to create a nuisance on any adjoining properties.
- [63] The provision of adequate fire-fighting infrastructure is an important consideration in new developments. W&WWBU advise 'all aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. The existing and proposed dwellings must be constructed within 135m of an existing fire hydrant otherwise the proposal will be non-compliant with fire-fighting requirements'. As there are no local connections to a hydrant, should the consent be approved, the landowner will need to install sufficient storage as set out in the NZFS Code of Practice.
- [64] The Consents Officer for the W&WWBU sought no conditions for inclusion in the decision certificate should the application be successful. I have read and concur with her assessment.

Transportation (6.7.24)

- [65] The Council's Transport Planner, Mr Grant Fisher reviewed the application and made the following comments.
- [66] Access will be from Highcliff Road at the curve adjacent to the property's frontage. Visibility that can be achieved along the frontage of the site is considered to be sufficient for an operating speed of up to 60km/h as per NZTA RTS 6 guidelines. While no speed surveys are available in this location, Mr Fisher estimated the operating speed at the curve based on desktop calculations, and driving the road in this location, is in the order of 40-50km/h. Achievable sight distance for a vehicle access in this location is considered to be acceptable for the proposed use.
- [67] Should the application be approved, the vehicle access shall be a minimum 3.5m formed width, hard surfaced from the edge of the carriageway of Highcliff Road to a distance not less than 5.0m inside the property boundary, and be adequately drained for its duration. The vehicle crossing, between the road carriageway and the property boundary, is within legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from the DCC Transport Group).
- [68] In terms of parking and manoeuvring, the Transport Planner noted there is considered to be ample space available within the site to provide for the parking needs of the proposed activity, and to enable vehicles to drive onto and off the site in a forward direction.
- [69] Overall, Transportation considers the proposal to have negligible effect on the transportation network. It is my opinion the comments by the Council's Transportation Planner are appropriate given the setting and proposed activity. Overall, I consider the effects on the transportation network will be less than minor.

Residential Units and Cumulative Effect (6.7.15 & 6.7.4)

- [70] The District Plan directs the Committee to consider the cumulative effects of an increased density of residential units in this area, the potential for conflict and reverse sensitivity issues, amenity and economic well being of neighbouring properties, the compromising of amenity relating to the open nature of the environment, and the degree to which productive potential use of the site and neighbouring properties is compromised.
- [71] The site will easily cater for the effects of domestication, which encompasses both the proposed dwelling and barn including the day to day activity that arises from residential use.
- [72] The District Plan recognises that developments on undersized rural lots can pose a threat to sustainable management as the presence of residential development can create long term impediments to primary production activities. While this may apply to many undeveloped sites comprising a similar area, in this circumstance the site is constrained by area, vegetative cover and the conservation covenant, and as a result primary production is not likely to be economic. Despite this, the 2GP does not seek to extend the residential boundary beyond the existing settlement area.
- [73] Overall, I consider the effect of permitting a further residential unit on the subject site will result in only minor adverse cumulative effects within either the site or the wider area.

Sustainability (6.7.1)

- [74] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources. It also seeks to suitably manage infrastructure.
- [75] In terms of infrastructure, the Water and Waste Services Business Unit have raised no issues with the proposal as all infrastructural demands will be contained entirely on

the site. There is no expectation that the proposed dwelling will have adverse effects on the sustainability of the transportation network that are more than minor.

- [76] The effect of the proposal on the rural character and outstanding landscape will create a negative effect in terms of the outstanding landscape and the addition of an additional residential activity within the Peninsula. Analysis of the potential for the application to create a perceived undesirable precedent is addressed later in the report.

NES Assessing and Managing Contaminants in Soil to Protect Human Health

- [77] Typically, a search of all known records or archival evidence is carried out prior to lodging consent to form a view whether the site may be classified as a HAIL (Hazardous Activities or Industries List) site under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011.

- [78] In this case, the application states that the topography would preclude any activities which would occur on the land and fall within that list of hazardous activities. The applicant has not sought a HAIL record search.

- [79] A cursory review of the site history contained within the Council's records indicates no previous activities that may feature on the HAIL list are recorded. In this case, it may be reasonable to accept the assessment of the applicant's agent and not require a HAIL assessment. It is my recommendation that should consent be granted, the landowner should obtain a HAIL report to determine the land status.

Summary of the Effects on the Environment

- [80] I consider the proposal will result in some effects on the environment that are minor. The new bulk will loosely fit within the rural vernacular of the Pukehiki settlement and would appear as part of the wider setting once bedded into the site.
- [81] However, new development within the Outstanding Landscape Area (in terms of the current Plan definition) creates a conflict in terms of the intent of that overlay and further complicates the assessment. Both the Council's and applicant's landscape architect accepts effects on the landscape will be more than minor. Over time, and once the landscaping becomes more established, the effects on the landscape will lessen.

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

- [82] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the following section of the report assesses the proposal against the relevant objectives and policies of the Plan.

Dunedin City District Plan
Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The proposal is considered to be inconsistent with this objective and policy in that the proposal seeks to establish residential activity on an undeveloped undersized rural site within a landscape area. Adverse effects on the amenity are likely to be limited in terms of the mere presence of habitation rather than a dwelling of a design which simply does not fit within the setting. The site contains the Peggy's Hill conservation area, and the presence of a residential activity in close proximity is not complimentary although appropriate management of the land may result in positive effects. The proposal will, at best maintain the amenity of the immediate or wider area and is therefore generally consistent with this objective and policy. It is, however, not likely to enhance the amenity, but with further clarification from the applicant, there is scope for the proposal to be improved.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The proposal is considered to be consistent with these objectives and policies. Water and Waste Services have no issue with the development noting that while the site is zoned rural, it is within the water supply area boundaries. No upgrade of either water, wastewater or roading networks are required as a result of the development.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	The application is inconsistent with this objective and policy. While the physical resource will not be adversely affected as a result of the bulk, the additional domestication will further diminish the ability to utilise the land in productive rural capacity. Further, the topography does not lend itself being suitable for alternative more intensive rural use such as horticulture/ commercial gardens. While the Peggy's Hill Conservation Area will not be directly affected by the development, the presence of habitation and bulk nearby will affect the rural setting.
Policy 4.3.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	

Manawhenua

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

Rural

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objectives?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The proposal is considered to be inconsistent with these policies and objectives.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	The site is a little over 8.3ha, it is of insufficient size and form to be productive, and comprises regenerating vegetation. When considering the subject site in isolation, there is little opportunity to utilise the site in any productive agricultural or horticultural use. That said once residential activity is established there is little likelihood the land use will revert back to a productive use which does not meet the needs of future generations in terms of primary production potential.
Policy 6.3.3	To discourage land fragmentation, and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.	While acknowledging there is little productive rural use capable of occurring on the site at an economic level, the proposal is residential creep into the rural zone which makes any future likelihood of productive use more challenging. Taking into account the ability to utilise the land productively, and the term 'discourage', it is my opinion the proposal is inconsistent with this policy.
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The proposal is considered to be inconsistent with this objective and policy in as much as the site features few characteristics of a typical rural lot, yet is so significantly undersized from a density perspective.
Policy 6.3.5	Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character of the district include, but are not limited to: a) A predominance of natural features over human made features, b) High ratio of open space relative to the built environment, c) Significant areas of vegetation in pasture, crops, forestry and indigenous vegetation, d) Presence of large numbers of farmed animals, e) noises, smells and effects associated with the use of rural land for a wide range of agricultural, horticultural and forestry purposes, f) low population densities relative to urban areas, g) generally unsealed roads, h) absence of urban infrastructure.	The effects on amenity are minor given the scale of the proposal, set within the lower extent of the property. The character of the rural area will be altered as a result of establishing residential activity on an otherwise vacant rural site. The matters set out in policy 6.3.5 are tailored towards a typical rural lot, whereby the subject site comprises a little over 8.3ha set within a landscape zone.
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	The proposal is not expected to have any adverse effects which are more than minor on the amenity values of neighbouring properties in terms of a rural assessment.

		The effects of residential activity will be consistent with this policy in terms of actual effects on those residing in the immediate area. While I recognise a number of submitters contend the proposal will directly affect their property or business interests nearby, I remain unconvinced other properties will be affected.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activities are an expected element of the Rural zone. Although the adverse effects of the proposal are considered to be less than minor, the proposal involves the establishment of further residential activity on a significantly undersized rural lot. In my opinion the proposal can be considered consistent with this policy, although this is at odds with the landscape assessment set out in Section 14 of the Plan which is explored below.
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	The proposal is considered to be consistent with this objective and policy. No new roading or road upgrading is required. Council's Water and Waste Business Unit advise they have no issues with this proposal. The Transportation Department has raised no concerns with the proposed activity.
Policy 6.3.8	Ensure development in the Rural zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposal is considered to be inconsistent with this objective and policy. The site is currently undeveloped and features the Peggy's Hill conservation covenant. The addition of residential activity onto what is an undersized rural lot may create a perceived conflict between those who enjoy the conservation area.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	

Landscape Section

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 14.2.1 & 14.2.3	To ensure the City's outstanding natural features and landscapes are protected.	The application seeks to establish a residential activity and outbuildings on the undersized rural lot. The PCOLA complicates the development as the site contributes to the character of the Peninsula. The Council's Landscape Architect has considered the development in terms of the effects on the PCOLA. He generally accepts the stance taken by the applicant's landscape architect who acknowledges effects of the development in the short term are moderate and will diminish as the vegetation screening becomes established. Overall, it is my opinion the effect of the proposal on the landscape is inconsistent with these objectives and policy as the characteristics of the landscape is not being protected, rather being subject to minor adverse effects which will likely soften over time.
Policy 14.2.3	To identify Dunedin's outstanding landscapes, and identify and protect their important characteristics.	

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The proposal is considered to be consistent with these objectives and policies. The Transport Department has not identified any concern about the possible effects on the roading network.

Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5	Ensure safe standards for vehicle access.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.8	Provide for the safe interaction of pedestrians and vehicles.	

Environmental Issues

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 21.2.2	Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.	The proposal is considered to be consistent with this objective and policy. There is unlikely to be significant adverse noise associated with the established residential unit, nor the addition of a further residential unit.
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and amenity.	
Objective 21.2.4	Ensure that the disposal of wastes is undertaken in a manner that avoids, remedies or mitigates adverse effects on the health and amenity of people and communities with the City, and on their environment.	Water and Waste Services have no concerns about the ability of the site to cope with wastewater disposal. The proposal is considered to be consistent with this proposal.
Policy 21.3.6	Manage waste disposal facilities on land in a manner that minimises adverse effects on the health of people and communities, and on amenity values within the City.	

Proposed Plan

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

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	The proposal utilises existing roading infrastructure. The new access are not expected to have adverse amenity effects or compromise the safe operation of the road. The proposal is considered to be consistent with this objective.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	There are no changes proposed for the roading network except for new accesses onto Highcliff Road.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and	There is limited visibility along Highcliff Road from the proposed accesses to the new lots. If

	efficiency of the transport network for all travel methods.	the operating speed is as the Transport Planner calculated around the sweeping bend associated with the access, the proposal is considered to be consistent with this objective and these policies.
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	

Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The new lots will all be self-serviced, and therefore do not place any demand on Council infrastructure. There is no requirement to install any new infrastructure to be vested with Council. The proposal is considered to be consistent with this objective and policy.
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposed residential unit will be self-serviced, and considered to be of adequate size and shape for wastewater and stormwater to be appropriately managed. The soil conditions will need to be assessed at the time of preparation of the building platform with respect to wastewater management. Adequate water supply will need to be kept at all times for fire-fighting purposes. Any disposal system will need to be designed by an appropriately qualified person, keeping in mind the limitations of the site. If this is done, the proposal is considered to be consistent with this objective and these policies.
Policy 9.2.2.7	Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public infrastructure where the land use, development or the size and shape of resultant sites from a subdivision, ensure wastewater and stormwater can be disposed of in such a way that avoids adverse effects on the health of people on the site or on surrounding sites or, if avoidance is not possible, ensure any adverse effects would be insignificant.	
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	

Natural Environment

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 10.2.1	Areas of indigenous vegetation and the habitats of indigenous fauna are maintained and enhanced	The proposal will have limited interaction with the conservation covenant. While some submitters may not appreciate the presence of a residential activity onsite, the proposal could be positive in terms of native plantings and pest animal or plant management. The proposal is considered to be consistent with this objective and policy as the conservation values are likely to be maintained.
Policy 10.2.1.1	Encourage conservation activity in all zones.	
Policy 10.2.1.3	Limit indigenous vegetation clearance in the rural and rural residential zones to a size that avoids any adverse effects on the biodiversity values of the area of indigenous vegetation or, if avoidance is not possible, ensures that adverse effects are no more than minor.	The vegetation within the site on the lower reaches areas is primarily gorse, and its removal will not adversely affect the biodiversity values of the area. Any indigenous vegetation being removed will be minor in comparison to the amount that is being retained. New plantings will complement the

		site in terms of biodiversity by creating new habitat. The proposal is considered to be consistent with this policy.
Objective 10.2.5	Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development and their values, as identified in Appendix A3, are maintained or enhanced.	The applicant has proposed a suite of mitigation measures designed to minimise the effects of residential development on the landscape. Once established, there will be little in terms of adverse effects on the landscape values. In the short to mid-term however, the proposal will result in some adverse effect on the natural environment. The proposal is generally inconsistent with this objective and policies.
Policy 10.2.5.8	Require new buildings and structures, additions and alterations, and wind generators - on-site energy generation in Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones to have exterior colours and materials that avoid or, if avoidance is not possible, minimise adverse visual effects caused by reflectivity.	

Rural Zones

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	The proposal seeks to established residential activity on an undeveloped rural site where the proposal has no relationship with rural activity. The ability to use the subject site in isolation as a profitable rural block of land is challenging. That said, the economic potential is improved when the adjoining parcel of land co-owned by the applicant is used in tandem with the subject site. The proposed residential development is considered to be inconsistent with this objective and these policies.
Policy 16.2.1.4	Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	
Objective 16.2.2	The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: 1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised; 2. the residential character and amenity of adjoining residential zones is maintained; and 3. a reasonable level of amenity for residential activities in the rural zones.	There is certainly potential for conflict between rural activities or the nearby residential zone. Given the scale and siting of the proposed residential activity in conjunction with the landscaping plan, it is my opinion any conflict will be limited. The proposal is considered to be generally consistent with this objective.
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The proposal includes a yard breach in terms of 1075 Highcliff Road. That property is co-owned by the applicant and therefore is considered to be consistent with this policy.
Objective	The rural character values and amenity of	The proposed residential activity will intensify

16.2.3	the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; b) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c) buildings that are rural in nature, scale and design, such as barns and sheds; d) a low density of residential activity, which is associated with rural activities; e) a high proportion of land containing farmed animals, pasture, crops, and forestry; f) significant areas of indigenous vegetation and habitats for indigenous fauna; and g) other elements as described in the character descriptions of each rural zone located in Appendix A7.	the density of development of this part of the Peninsula to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to residential activity, but will have limited visibility from many public viewpoints. The proposal is considered to be inconsistent with this objective.
Policy 16.2.3.1	Require buildings, structures and network utilities to be set back from boundaries and identified ridgelines, and of a height that maintains the rural character values and visual amenity of the rural zones.	Despite being undersized in terms of site area, the density of development will be consistent with the adjoining rural residential lifestyle properties and will maintain many of the rural character values. The proposal will however introduce bulk associated with residential activity on an otherwise undeveloped rural site. The proposal will have some impact on the visual amenity of the rural zone, and is inconsistent with these policies.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	

- [83] The proposal is consistent with the public health, hazards and transport sections of the 2GP. In terms of the rural and natural environments, the proposal is in an overall assessment considered to be inconsistent with these provisions. As the Proposed Plan is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan.
- [84] With respect to the operative Plan, the proposal is considered consistent with the relevant objectives and policies for the Manawhenua, Transport and Environmental sections. The proposal is considered inconsistent overall with regard to the sustainability, landscape and rural sections. Focusing on the rural section, it is the site is challenging in terms of the ability to establish a productive rural unit when the subject site is considered in isolation. The size, topography and presence of Peggy's Hill conservation area further negate the ability to use the land economically.
- [85] In terms of the landscape provisions, the applicant's landscape assessment does not differ dramatically from the opinion of the Council's Landscape Architect. The site is located within a significant landscape, and the proposal will introduce both bulk and day to day residential use to what is currently a vacant rural site.
- [86] In the short term, the effects of the proposal will be more than minor. Over time, these effects will diminish and the presence of a dwelling on the site will become an accepted part of the landscape. Overall, it is my opinion the effects of the proposal are inconsistent with the landscape provisions.
- [87] To attribute a weighting against the full suite of objectives and policies one must consider the most crucial elements against the District Plan. The proposal is inconsistent with the sustainability, landscape and rural assessments. In my opinion the conflict relating to residential use on an undersized rural lot should be afforded some weighting as the site features low potential in a primary production context, but in isolation should not overshadow the balance assessment. I note the adjacent property comprising 11.37ha and co-owned by the applicant already features

residential activity. Both properties could potentially operate in unison as a profitable rural business.

- [88] Most importantly no assessment matters of the objectives or policies were deemed to be contrary. I note that case law establishes a high bar, assuming contrary to mean opposite to, or repugnant to.
- [89] Overall, it is my opinion the proposal is inconsistent with the key objectives and policies for the rural and landscape zones.

Assessment of Regional Policy Statement and Plans

- [90] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. At the time of writing this report, the PRPS is under appeal.
- [91] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 10: Biota. It is also considered to be consistent or generally consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:
- Objective 1.1: Resource Management in Otago is integrated;
 - Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
 - Policy 3.1.9: Ecosystems and indigenous biological diversity;
 - Policy 3.1.10: Natural features, landscapes and seascapes;
 - Policy 3.1.12: Environmental enhancement;
 - Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.
 - Policy 3.2.2: Managing significant vegetation and habitats;
 - Policy 3.2.3: Identifying outstanding natural features, landscapes and seascapes.
 - Objective 4.3: Infrastructure is managed and developed in a sustainable way;
 - Policy 4.3.1: Managing infrastructure activities;
 - Objective 5.3: Sufficient land is managed and protected for economic production;
 - Policy 5.3.1: Rural activities.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

- [92] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the provisions of the National Environmental Standard were taken into account when assessing the application. The proposal is considered to be consistent with the policy objective of the National Environmental Standard as the site appears likely to have had no previous activities which feature on the HAIL list. As noted previously, should consent be issued, it is my recommendation a HAIL assessment is carried out for the purpose of completeness.

7. DECISION MAKING FRAMEWORK

- [93] Before traversing the Part II matters, it is appropriate to note the High Court's recent decision and the implications of *R J Davidson Family Trust v Marlborough District Council*. The consequence of this case requires decision makers to apply Part II where plans and higher level plans are uncertain. In this case, the outcome of the 2GP and the Proposed Regional Policy Statement are uncertain and therefore Part II shall be applied.

Part II Matters

- [94] When considering an application for resource consent, any assessment of the proposal to be made is subject to consideration of the matters outlined in Part II of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:
- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
 - 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment";
 - 6(b) "The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development";
 - 6(c) "The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - 6(f) "the protection of historic heritage from inappropriate subdivision, use, and development";
 - 7(b) "The efficient use and development of natural and physical resources";
 - 7(c) "The maintenance and enhancement of amenity values"; and
 - 7(f) "Maintenance and enhancement of the quality of the environment"
- [95] With regard to Section 5(2)(a), it is considered that the proposed residential activity will impact on the productive use of the land. This is even more evident when considering the adjoining property is co-owned by the applicant. The site is presently a significantly undersized rural lot that includes the Peggy's Hill conservation covenant, but both properties in tandem is sufficiently sized to potentially be economically viable.
- [96] The proposed development will not have significant adverse effects on the immediate environment around the subject site or the rural area in general. The Committee can have confidence that the proposal will result in minor environmental effects and as such the application is generally consistent with 5(2)(c). Vegetation plantings will, once established, further mitigate effects on the environment in terms of visual effects.
- [97] With regard to Section 6(b) the proposal will have an adverse effect on the landscape, although the scale of any effect is challenging to quantify given the siting of bulk will be below the area of prominence. Both the Council's and applicant's landscape architects hold the view that the effects will be more than minor in terms of the landscape in the short to medium term. Once the new buildings bed into the site, and native plantings become established, the effects will be minor. The proposal is, nonetheless, inconsistent with 6(b).
- [98] With regard to Section 7(b), the proposal is an inefficient use of the resource. The site is part of a wider property, comprising two separate registers, and over 20ha. A dwelling is already established on the other lot. The application highlighted the dissolution of a relationship, where each will own a separate Register. The site as it currently stands can theoretically operate as an economic unit given the site. Once split, neither register will be sufficiently sized to be an economic resource. In my opinion the application is inconsistent with 7(b).
- [99] With regard to Section 7(c), it is considered that the proposal will be inconsistent with this assessment. The site is rural and currently vacant and under-utilised, that is with the exception of the Peggy's Hill conservation covenant. The addition of a residential unit and residential activity on the site is at odds with maintaining and enhancing amenity when one considers the Outstanding Landscape annotation in the Plan for the wider area.

- [100] With regard to Section 7(f), should the consent be approved, the proposal will in my opinion effect the quality of the environment to some degree. As noted above, the site enjoys the conservation covenant for the remnant vegetation species and form, and residential activity can only negatively affect the environment. It is however appropriate to acknowledge that the proposal is for a single residential unit on an undersized rural lot. Should consent be granted, the dwelling will, in real terms, fit into the environment and could be relatively neutral. Discounting precedent implications, it is challenging to quantify effects without potentially overstating the real impact of the proposal on the environment.

Section 104

- [101] Section 104(1)(a) states that the Committee shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5 of this report assessed the environmental effects of the proposal and concluded that the effects on the environment will be no more than minor in terms of transportation, Manawhenua, infrastructure and environmental effects.
- [102] Section 104(1)(b) requires the Committee to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6 of this report concluded that the application is inconsistent with the key objectives and policies. Objectives and policies for sustainability, rural and landscape sections were considered to be inconsistent relating to the over-dense rural development within the PCOLA.
- [103] Section 104(1)(b) requires the Committee to have regard to any relevant regional policy statement, regional plan or National Environmental Standard. The applications are consistent with the relevant objectives and policies of the Regional Policy Statement for Otago and Proposed Regional Policy Statement. The application is also consistent with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- [104] Section 104(1)(c) requires the Committee to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Committee is a desired outcome for consents. Approving further development on an already undersized rural lot has the potential to undermine the integrity of the District Plan. A more thorough examination is considered below.

True exception (s104(1)(c))

- [105] Section 104(1)(c) requires the Committee to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Committee is a desired outcome for consents, a key matter relevant to the Committee. The application to establish a residential activity on the undersized residential lot is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.
- [106] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:
- “...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan.”
- [107] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an

'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

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

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

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

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

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

[111] In this case the application is non-complying because the site is undersized in terms of area. Putting aside the landscape overlay, the minimum lot size to accommodate residential activity in the rural zone is 15ha. The 2GP promotes a 20ha minimum Lot size. At a broader level, the subject site forms one of two adjoining properties held in common ownership in separate Registers. The other property at 1075 Highcliff Road includes established residential activity. Together both properties could potentially operate as an economic unit, and comprises over 20ha. To allow residential activity on the subject site will effectively create two rural properties each with over-dense residential activity.

[112] There are a number of undersized properties in the immediate area that remain undeveloped. In my opinion, should this application be successful, it should not come as a surprise if other landowners in the immediate area also seek consent for residential activity by adopting a similar approach. The proposal offers little that is unique in my mind that justifies the application. The separation of a relationship is neither compelling nor unique.

[113] The Committee should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current application in this regard. If the Committee deems there to be a real threat from this proposal should it be approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can, or should be avoided. The risk to plan integrity falls not only on the operative Plan, but also the Proposed 2GP, and therefore the Hearings Committee must be confident the site and proposal is indeed unique in terms of relevant case law. In my opinion, the proposal is not a true exception.

Non complying status (s104D)

- [114] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.
- [115] In my mind, the proposal will over time not result in any effects on the environment or amenity that are more than minor. In section 6, I have concluded that overall the proposal is mostly consistent, although the rural and landscape assessment is considered to be inconsistent but not contrary.
- [116] While, the proposal only need pass one branch of the gateway test in order for the Committee to be able to grant consent, it is my opinion that the gateway tests relating to both effects and objectives and policies of the District Plan are sufficiently satisfied. That is, effects on landscape in the short term may be moderate, but over time the effects will diminish as landscaping matures and the community begins to recognise the development is part of the environment. The Committee is therefore able to consider granting consent to the proposal.

8. RECOMMENDATION

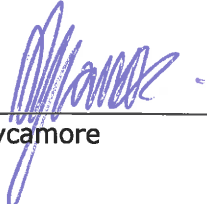
- [117] It is my recommendation the application to establish residential activity on an undersized rural lot (within the Peninsula Coast Outstanding Landscape Area) at 1069 Highcliff Road, Pukehiki, be **declined**.

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment of the proposed activity will be more than minor in the short term. As the bulk associated with residential activity becomes intertwined with the land and as curtilage landscaping matures, those effects will undoubtedly soften such that effects will be minor, and potentially less than minor. The existing residential activity on the adjacent site co-owned by the applicant demonstrates the ease with which residential use can exist within the site.
2. In terms of the Peninsula Coast Outstanding Landscape Area, I accept further development in the PCOLA is inconsistent with the preservation of those landscape values. The siting and form of the proposed dwelling and farm shed are prominent in terms of the landscape considerations.
3. The site features the Peggy's Hill Conservation Area comprising a stand of remnant native vegetation with conservation values. The addition of residential activity closer to this covenant area is not necessarily positive or negative in terms of protecting those conservation values. I acknowledge the addition of locally sourced native species and potential pest management may positively contribute to the conservation area.
4. The applicant co-owns the adjacent rural zoned property. That site comprises a little over 11ha, and includes a residential unit. This property in conjunction with the subject site is of a size where primary production in some capacity could be economic. I accept the subject site is considered not suitable for either typical or more intensive rural activities due to physical constraints and the economics of retaining both properties as one rural activity is obviously more compelling than splitting the two into separate ownership.

5. The application promotes the outcome as a meaningful outcome to the dissolution of a relationship. While I acknowledge the challenges associated with the separation of wealth, it is my view little weighting should be attributed to this matter.
6. The subject site is significantly undersized in terms of residential use. There are a number of similar sized rural lots in the broader area that are marginal in terms of primary productivity. Should this consent be approved, the Committee could anticipate further applications based on the merits of this consent.
7. Many rural properties are adjacent to residential zones and have a transitional form, dimensioned between the anticipated Lot sizes for both the residential and rural areas. These properties serve as a buffer moderating the rural-residential fence. While not being a typical rural form, it is not necessarily appropriate to establish residential activity on the properties despite rural use being marginally or not economically viable.
8. The Proposed Plan is subject to submissions and the new zoning and minimum site size has not been finalised. Greater weight is to be given to the current District Plan. There are submissions both opposing and supporting the new minimum site sizes, so the outcome of the submission process cannot be assumed at this stage.
9. The application is inconsistent with the key objectives and policies in terms of sustainability, the rural zone and the landscape sections in both the District Plan and Proposed District Plan (the 2GP). No objectives and policies are considered contrary.
10. It is my opinion the application passes the effects gateway for a non-complying activity under section 104(D) of the Act in terms of both the effects and policy assessment.
11. Crucially, there is no true exception argument which would allow this application to proceed without potentially creating an undesirable precedent for the Rural zone.
12. It is my opinion that the proposal will create an undesirable perceived precedent given the potential for other small rural landholders to rely on similar arguments. A number of small rural lots nearby could apply much the same argument set out in the application to promote further intensification. While the site distinguishes itself on a number of relevant aspects, it is still realistic to anticipate further resource consent applications relying on this decision for leverage.

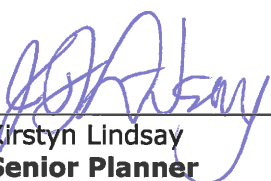
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Date

21-02-17

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