

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 18 October 2017

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2017-49
LAND USE LUC-2017-255
94 HOLYHEAD STREET
OUTRAM

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 18 October 2017. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2. BACKGROUND TO APPLICATION

- [2] The subject site is part of a rural property, formerly used for market gardening, at 94 Holyhead Street, Outram. It is an irregular shaped property with State Highway 87 and its road reserve along its northwest and northern boundaries, the Taieri River floodbank along its south-eastern boundary, and Holyhead Street on its southern edge. State Highway 87 becomes Mountfort Street as it enters Outram. The site abuts several residential properties on its western boundary. There is an existing dwelling on-site with access to the end of the formed section of Holyhead Street. Alternative access is also available to State Highway 87 via an existing intersection which serves an unnamed road (within State highway road reserve) running along the northern edge of the subject site. The subject site is legally described as Lot 2 Deposited Plan 20759, held in Computer Freehold Register OT12B/346, and has an area of 6.3518ha.
- [3] The site was previously subject of a private plan change, PC-2012-14, to rezone the land from Rural to Residential 5. The Hearings Committee declined the plan change application on 13 June 2013 for the following reasons (refer Appendix E of this report):
- The proposal was generally inconsistent with the objectives and policies of the Sustainability section of the District Plan.
 - The proposal was inconsistent with the Spatial Plan's overall objective for Dunedin's urban form and associated urban form policies.
 - The proposal would result in the loss of high class soils.
 - The proposal did not represent the efficient use of land and infrastructure.
 - The design did not provide for good connectivity with Outram, and limited the benefits to the town.
- [4] The applicant then appealed the decision. A consent order, ENV-2013-CHC-84, was subsequently issued on 21 January 2015 which rezoned approximately half the subject property as Residential 5. The balance land at the north-eastern end of the site

remains zoned Rural. The site is now subject to a Structure Plan, Appendix 8.7 in the District Plan, which provides for 26 residential lots, new road, and a detention pond area on the southwest portion of the property. The Structure Plan was sufficiently detailed enough for the lots to be numbered and their areas defined, and the associated rules of Appendix 8.7 determined the access routes for the various lots. The northeast portion of the site retained its Rural zoning.

- [5] Resource consent SUB-2017-32 for the staged subdivision of the site into 26 residential lots, road, utility reserve and balance land, was issued on 22 May 2017. The layout of the subdivision is almost identical to the Structure Plan. Stage 1 will create ten residential lots having access to State Highway 87, and two lots at the road frontage at Holyhead Street. Stage 2 will create a new cul-de-sac from Holyhead to serve eleven new residential lots and three of the Stage 1 lots. Another residential lot will be accessed off the end of Holyhead Street while the existing residential dwelling on the site will be contained within another new residential-sized lot. The balance land will become Lot 27.
- [6] Land use consent LUC-2017-182 was issued at the same time for the establishment of the existing house (a scheduled heritage structure B651) on a mixed zoned site, Lot 100, at Stage 1. Neither stage of SUB-2017-32 has been given effect.

DESCRIPTION OF ACTIVITY

- [7] The applicant now seeks to subdivide Lots 10 and 27 SUB-2017-32 into 15 residential lots, legal road and small lots to be amalgamated with adjoining parcels. Lot 10 SUB-2017-32 is a residentially sized parcel of approximately 1050m² situated at the end of the new cul-de-sac. Lot 27 SUB-2017-32 is the balance land of the underlying subdivision and has an area of 2.17ha. While the subject site of the present application currently remains part of the entire property of 94 Holyhead Street, held within CFR OT12B/346, the consent sought relates to the land of Lots 10 and 27 SUB-2017-32 only.
- [8] The proposed subdivision will extend the cul-de-sac of SUB-2017-32 through Lot 10 and into Lot 27, lengthening the proposed road by approximately 170m. The two slithers of Lot 10 SUB-2017-32 to either side of the new legal road will be amalgamated with the adjoining parcels of SUB-2017-32 so as not to create an odd shaped road reserve or two small and narrow lots with no practical use as standalone parcels. The new road will be proposed Lots 47 and 48. Proposed Lot 50 will be a public walkway extending between the new road and the Stage highway road reserve so as to enable public walking access from Holyhead Street to the State highway. Proposed Lot 49 is a small parcel of 140m², currently occupied by a vehicle turning circle associated with an existing entranceway off the State highway, which is to vest as road.
- [9] The new residential lots will range in size from 1010m² to 1550m², all significantly under-sized for Rural-zoned lots but compliant with Residential 5-zone expectations. The lots will be numbered 33 to 53 to avoid repeating lot numbers when taking into account the subdivision of SUB-2017-32. The proposal is for the future development of the new lots to comply with the Residential 5 bulk and location requirements. These specify 4.5m front yards, 2.0m side and rear yards, 63° height plane angles, and a maximum site coverage of 30%.
- [10] The proposed cul-de-sac will provide access to proposed Lots 33 to 41, 43, 44 and 53. Proposed Lots 42 and 46 will have direct frontage to the State highway road reserve (but not the road itself; access to these lots will be via a shared accessway over the road reserve to an existing intersection onto State Highway 87). Proposed Lot 45 will be a rear site with no frontage which will obtain access via a new access lot created by SUB-2017-32.

- [11] The proposal includes a no-build view shaft across Lots 42 to 46, centred on the proposed walkway, Lot 50. The purpose of the building restriction area is to preserve the public views from State Highway 87 of the existing house on 94 Holyhead Street. The house is a historic homestead, and has a striking appearance. The building restriction area will affected approximately half the areas of Lots 42 to 46. Another building restriction area 20.0m wide will be created along the southeast edges or proposed Lots 33 to 37 to recognise the nearby flood bank. Excavations within this area require consent from the Otago Regional Council; as such, the subdivision has been designed so that the development of the new lots will not require excavation within this area.
- [12] The applicant has applied for earthworks consent to form the new road, walkway, and a right of way over Lot 37. The applicant expects there to be 1700m³ of topsoil stripped from the site over an area of 4250m², and to an average depth of 400mm. The stripping will occur in the location of the road, walkway and right of way. Approximately half the topsoil will be reinstated on-site once re-levelling has occurred, while the remaining will be removed to an approved location.
- [13] Following the topsoil stripping, the ground will be re-levelled to achieve the desired sub-grade for the accesses. Approximately 1275m³ of clay material, taken from the same area to an average depth of 300mm, will be carted to waste. The greatest depth of excavation will be approximately 500mm. No fill will be placed on-site unless necessary to rectify ground conditions.
- [14] The applicant intends that the new lots will be served for water supply via the existing public reticulated supply. Wastewater drainage will be via new Hynds Lifestyle aerated wastewater systems installed on each lot. The stormwater will be discharged into the detention pond approved under SUB-2017-32. The applicant has provided a Fluent Solutions report detailing a preliminary stormwater management plan.

3. ACTIVITY STATUS

- [15] 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.
- [16] Section 88A of the Resource Management Act 1991 states that the activity status of an application is determined at the time of lodging the consent. The activity status could, therefore, be determined by the current District Plan or the Proposed Plan, depending on which rules are operative at the time. Nevertheless, even if it is the current District Plan which determines the activity status of the application, any rules of a proposed plan that have been given effect must be considered during the assessment of the application pursuant to section 104(1)(b) of the Act.
- [17] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

- [18] Lot 10 SUB-2017-32 is zoned **Residential 5**, and Lot 27 SUB-2017-32 is zoned **Rural**. The existing house of 94 Holyhead Street is listed in Schedule 25.1 as B651. Much of the site is within the **Groundwater Protection Zone A**. The northwest boundary of the site abuts an access within the Outram-Mosgiel Road road reserve that is designated **D464 – State Highway SH 87**. The State highway is a National Road in the District Plan Roding Hierarchy. The site is subject of **Structure Plan – Appendix 8.7**. The general area is shown on the Hazards Register as being subject to

11407 – Seismic (liquefaction) and 11582 – Flood (overland flow path) and 11832 – Contaminated Land.

Subdivision Activity:

- [19] Rule 18.5.1(iii) lists subdivision in the Residential zones as a restricted discretionary activity where the application complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12, and each site complies with minimum area and frontage requirements of the relevant zone, or a multi-unit residential activity complies with the requirements of permitted activities within the original site including overall density. The subdivision of the Residential 5 zoned land does not result in any new residential lots. Rule 18.5.12 requires subdivision to comply with any relevant structure plan. The proposed subdivision of both Lot 10 and Lot 27 SUB-2017-32 is not compliant with Appendix 8.7.
- [20] Rule 18.5.1(i) lists subdivision as a restricted discretionary activity in the Rural zone where the application complies with Rules 18.5.3 – 18.5.6, 18.5.9 and 18.5.10, and each resulting site is at least 15.0ha. The lots arising from the subdivision of Lot 27 SUB-2017-32 will all be significantly undersized for the Rural zoning.
- [21] For the above reasons, the proposed subdivision is considered to be a **non-complying** subdivision pursuant to Rule 18.5.2.

Land Use Activity:

- [22] Rule 8.11.1(i)(c) lists residential activity at a density of not less than 1000m² of site area per residential unit as being a permitted activity for the Residential 5 zone, subject to compliance with the performance criteria. None of the new residential lots will have Residential 5-zoned land. Proposed Lots 47, 51 and 52 (all Residential 5-zoning) are not residential lots.
- [23] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity for the Rural zone, provided that the minimum area of the site is not less than 15ha. None of the new lots will have more than 15.0ha of Rural zoned land and the residential activity of all new lots will be **non-complying** activities pursuant to Rule 6.5.7(i).
- [24] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to what the Plan anticipates as an acceptable use of the land. The residential lots, Lots 33 to 46 and 53 will all be in the Rural zone, and will fail to comply with the following:
- Rule 6.5.3(i) requires residential buildings in the Rural zone to maintain 20.0m front yards and 40.0m side and rear yards. None of the future houses built on these lots will be able to maintain yards of these dimensions.
- [25] Rule 17.7.1 exempts earthworks for subdivision from requiring a land use consent for earthworks provided detailed engineering plans for earthworks are expressly approved as part of the subdivision consent process. There are no detailed engineering plans submitted with the application. Accordingly, the earthworks are subject to Rule 17.7.2(ii) and the performance standards in Rules 17.7.3 and 17.7.4 for permitted and controlled activities respectively:
- [26] *Scale Thresholds:*
- Rule 17.7.3(ii) sets scale thresholds of a maximum change in ground level of 2.0m, and a maximum volume of 200m³. The proposed earthworks will exceed the volume scale threshold by approximately 2800m³.
 - Rule 17.7.4(iii) sets a maximum volume of 1000m³. The proposed earthworks will exceed this maximum volume by approximately 1900m².

Rule 17.7.5(ii) notes that earthworks which do not comply with Rule 17.7.3(ii) scale thresholds or Rule 17.7.4(iii) are a **restricted discretionary** activity. Council's discretion is restricted to:

- a) Adverse effects on the amenity of neighbouring properties;
- b) Effects on visual amenity and landscape;
- c) Effects on any archaeological sites and/or any cultural site;
- d) Effects on the transportation network, caused by the transport of excavated material or fill;
- e) Effects from the release of sediment beyond the site boundaries, including transport of sediment by stormwater systems;
- f) Cumulative effects relating to any of these matters;
- g) Design and engineering of retaining structures and earthworks;
- h) Effects on the stability of land and buildings;
- i) Effects on the surface flow of water and on flood risk;
- j) Effects on underground utilities.

[27] Rule 17.7.3(iv) specifies that within a Groundwater Protection Zone, excavations other than those required for roading or foundations for buildings shall not exceed 250mm in depth or 10m³ in volume. The proposed earthworks will involve some contouring of the site to a depth of 400mm.

[28] Rule 17.7.4(i) notes that earthworks which do not comply with Rule 17.7.3(iv) 'Groundwater Protection Zones' is a **controlled** activity. The earthworks are controlled in respect of:

- a) The nature and extent of the proposed work, and the degree to which it may disturb the protective mantle over the Groundwater Protection Zone as identified on District Plan maps.
- b) The extent to which the proposed works may increase the risk of groundwater contamination.

The Proposed Plan

[29] Lot 10 SUB-2017-32 is zoned **Township and Settlement**, and Lot 27 SUB-2017-32 is zoned **Rural – Taieri Plains**. Part of the site is **Groundwater Protection A – Lower Taieri Aquifer**. The residential zoned land has **No DCC Reticulated Wastewater** servicing, and is part of the **Holyhead Street Structure Plan**. The rural zoned land has **High Class Soils**. The general area has a **Hazard 2 – Flood** risk. The existing house on Lot 26 SUB-2017-32 is a Heritage and Character Contributing Building B651. The access within the Outram-Mosgiel Road road reserve remains designated **D464 – State Highway SH 87**. The State highway is a Strategic Road in the District Plan Road Classification Hierarchy.

Subdivision Activity:

[30] Rule 15.3.5.2 lists general subdivision in the residential zones as being a restricted discretionary activity subject to compliance with the performance standards. Rule 15.7.4.1(i) sets the minimum site size for the Township and Settlement zone (no DCC reticulated wastewater mapped area) as being 1000m². None of the new residential lots will have Township and Settlement-zoned land. Proposed Lots 47, 51 and 52 (all Township and Settlement zoning) are not residential lots. This rule is not in effect.

[31] Rule 16.3.5.1 specifies that subdivision is a restricted discretionary activity in the Rural zones, subject to compliance with the performance criteria. The proposed subdivision will fail to comply with Rule 16.7.4.1(g) which sets the minimum site size for the Rural – Taieri Plains zone at 40.0ha. None of the lots created will have 40.0ha.

[32] While the Rural Section rules of the Proposed Plan are subject to submissions, and therefore have yet to be finalised, Rule 16.7.4 (minimum site size for rural zones) and Rule 16.9.5.5 (assessment of subdivision performance standard contraventions –

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

Land Use:

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

Land Use Activity:

- [] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. Rule 16.5.2.1(g) specifies that the first residential activity on a rural site in the Rural – Taieri Plains zone requires 25.0ha of land for it to be a permitted activity. All the proposed lots will have less than 25.0ha; therefore, residential activity for these sites is considered to be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

Development Activity:

- [34] There are no actual building proposals for any of the new sites, but residential activity is anticipated on each of proposed Lots 33 to 46 and 53. Rule 16.3.4.5 lists the construction of new buildings greater than 60m² as being a permitted activity in the rural zones, subject to the performance standards.
- [35] Rule 16.6.11.1(a) of the Rural Section specifies that residential buildings are to maintain 20m setback from road boundaries, and 40m setback from neighbouring boundaries. None of the houses built on these lots will be able to maintain these setback distances. The new development is considered to be a restricted discretionary activity pursuant to Rule 16.3.2.13. This rule is not in effect.
- [36] Rule 16.3.4.15 lists earthworks – small scale as being a permitted activity in the rural zones, subject to compliance with the performance standards. Rule 16.6.1.1(a)(iii) specifies a maximum volume of 30m³ earthworks per 100m² of site area. This equates to approximately 1275m³ of earth movement over the area of the earthworks. The proposed earthworks will exceed this volume, and as such, the earthworks are considered to be earthworks – large scale. These earthworks are a restricted discretionary activity pursuant to Rule 16.3.4.16. This rule is not in effect.

Overall Proposed Plan Status:

- [37] Having regard to both the land use and development activity components under the Proposed Plan, the future residential activity of all the proposed lots is considered to be a non-complying activity in terms of the rules currently proposed.

Summary

- [38] The application was lodged on 31 May 2017, after the close of submissions on the Proposed Plan. The residential and rural zone rules are subject to submissions and could change as a result of the subdivision process. However, Rule 16.7.4 (regarding minimum site size for the subdivision of Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules apply to the subdivision of Rural land but all other rules are not relevant to the subdivision or land use activity status of the application as determined at the time of lodgement.
- [39] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan and the Proposed Plan, and is considered to be a **non-complying** activity. The activity status of the residential activity for the new sites is determined

by the Dunedin City District Plan, and is also considered to be a **non-complying** activity.

- [40] At the time of assessing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sites has been given effect, and is applicable to this application, but is subject to submissions. All other relevant rules are not in effect and are also subject to submissions. The rules for both subdivision and land use could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision application except for the minimum site size rule which needs to be weighted accordingly.

NES Soil Contamination Considerations:

- [41] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

- [42] The applicant has submitted a preliminary site investigation report (PSI) dated 24 January 2013, prepared by Spiire. While the subject site has a history of market gardening, Spiire does not consider that the market gardening involved persistent pesticide bulk storage or use of pesticides on the site. The Spiire report states:

'It is the view of Spiire that it is uncertain if there is a "piece of land" in the terminology of the NES. It is highly likely that market gardening has taken place over most of the site, however, the actual HAIL activity of persistent pesticide storage and use is unlikely.'

- [43] The Spiire report concludes:

'... based on the information provided with this document that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land.'

- [44] The Otago Regional Council has considered the HAIL status of the subject site in a report dated 5 May 2017. The Otago Regional Council believed that, based on the sites extensive history of market gardening over a period of 60 years, that the use and storage of persistent pesticides has occurred on-site. The Otago Regional Council did not consider that the limited amount of sampling undertaken by Spiire was fully representative of the disposition of all soils on the site, and as such, the property was considered to be a HAIL site.

- [45] Council's Consulting Engineer, Stantec (formerly MWH), has also considered the Spiire and Otago Regional Council's reports. The Consulting Engineer comments in an email dated 19 May 2017, submitted for SUB-2017-32:

*'I agree with Spiire's conclusion that, "the site has been investigated as a potential HAIL site, with negative findings as to same." However I also note that Spiire has been less certain over whether or not the NES should apply given that, in their view, "the actual HAIL activity of persistent pesticide storage and use is **unlikely**" [emphasis added by Stantec].*

- [46] As such, the Consulting Engineer considered that the Dunedin City Council needed to issue consent under the NES for the subdivision of the land. Given that a Detailed Site

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

- [47] The applicant has since submitted another report prepared by EC Otago Ltd which does not fulfil the requirements of a Detailed Site Investigation but did involve thorough soil sampling of the subject site and the land of SUB-2017-32. The report concludes that all analytes were found to be at acceptable levels for residential use or below the limits of detection, and it was, *'...highly unlikely that there will be a risk to human health if the activity is done to the piece of land'*
- [48] While neither the Splire report or the EC Otago Ltd report meet the criteria of a Detailed Site Investigation, the two reports combined cover most of the necessary aspects. Council's Consulting Engineer, Stantec, has considered the matter and concludes:

'Taken over all the DSI criteria are comprehensively met by the combination of these two reports. Thus the disturbance of site soils may indeed be deemed to be a controlled activity under the NES (even though a stand-alone DSI is absent) and the subdivision and change of use can each be considered to be permitted activities.'

- [49] Given that the two reports are not completely satisfactory to meet the requirements for a Preliminary or Detailed Site Investigation, and in order to avoid any suggestion of inappropriate assessment, the proposal is considered to be a **discretionary** activity pursuant to Regulation 11.
- [50] Overall, taking into consideration the District Plan, Proposed Plan and NES activity statuses, the subdivision is considered to be a **non-complying** activity. The land use consent sought is similarly a **non-complying** activity.

4. NOTIFICATION AND SUBMISSIONS

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

Person	Owner	Occupier	Address	Obtained
Roger Allan Capil	✓		51 Mountfort Street	9 February 2017
Michelle Antionette Capil	✓	✓	51 Mountfort Street	8 May 2017

- [52] The property at 51 Mountfort Street was sold on 20 September 2017. I have had a telephone conversation with the purchaser who indicated he was not in support of the proposal but had missed the submission period. The purchaser has not been in contact with me since, and I can find no correspondence from this person to Council. I consider that the above affected party approval should be considered with some reservation given that it may not reflect the views of the present owners of the property. However, as no late submission has been received from this party, there may be no need to consider effects on them.
- [53] Section 95A of the Act directs that a consent authority may notify an application if the effects on the environment are likely to be more than minor, the applicant requests public notification, or special circumstances may apply. In this case, the applicant has requested that the applications be notified.
- [54] The application was publicly notified in the Otago Daily Times on 17 June 2017. Copies of the application were sent to those parties whom the Council considered could be directly affected by the proposal.

[55] Eight submissions were received following notification. Three submissions are in support, one submission is neutral in its stance, and the other four submissions oppose the application. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Ken Cookson	Support	• Supports the whole application. • The site is an enclosed block of land which is not viable for farming. • This is a good project for the expansion of Outram within the town's boundaries. • Requests that the application be approved.	No.
2. Colin & Kim Cramond	Oppose	• Submitters do not want a stormwater runoff pond and pump station situated opposite their house or pumping into the river. • The possible noise of the pump. • Smell of stagnant water. • Noise of more vehicles and headlights shining into windows at night. • Loss of rural view. • Submitters brought property on basis that subdivision had been declined twice and was no longer being considered. • Stormwater being pumped into Taieri River is environmentally wrong. • Requests that the application be declined.	No.
3. NZ Transport Agency (NZTA)	Neutral	• The earlier subdivision consent SUB-2017-32 included a number of conditions to improve sight distances at the access onto SH 87. The access is to be upgraded to a NZTA Diagram E standard. Hedge to be removed at Lots 4 and 5. • Lot 32 is to be vested with NZTA to ensure area is kept clear to improve visibility. NZTA supports all these conditions. • NZTA remains concerned about poor sight distance from SH 87 access and cumulative safety effects of adding three lots to the access as detailed in application. • Current sight distance towards Outram is 159m, measured by applicant from middle of intersection, looking towards Outram over Lot 32. • NZTA safety standard for sight distance at this location, for an estimated traffic speed of 80km/hr, is 203m. Sight distance falls short. • To ensure proposed access attains a safe sight distance visibility, the NZTA seeks: 1. Either a building line restriction area between Lot 32 and over Lots 3, 4, 5 and 6 to accommodate a 203m sight line, and including a 0.5m buffer on the east side of the line within Lots 3, 4, 5 and 6. Restriction to include no permanent or temporary structures, no vegetation over 0.5m height. Alternatively, include this area in Lot 32 and vest with NZTA. 2. Widen Lot 50 to give Lots 42, 45 and 46 access to cul-de-sac. Restrict access via Lot 50 to SH 87. No access for these lots to SH. • Supports proposed condition 1) construction	Yes.

		traffic management plan and y), z), and aa) which impose reverse sensitivity conditions to design habitable spaces to residents from road noise. • Details NZTA statutory objective. • The proposed land use activity has potential to have adverse effect on safety, efficiency and sustainability of the land transport system. • Recommends conditions for consent, as above.	
4. Otago Regional Council (ORC)	Oppose	• Application fails to consider effects on ORC flood control infrastructure. • Proposals for stormwater and wastewater disposal are inadequate. • Development has potential to contaminate groundwater. • Site subject to natural hazards, making site inappropriate for residential development. Risk to people and property from natural hazards will increase if consents granted. • Proposal is for increased subdivision of rural land. • Proposal is for residential activities on rural-zoned land. • Proposal entails ad hoc and sporadic intrusion of non-rural activities into the rural zone. • Site has high class soils which should be retained and used for primary production. • Proposal is contrary to objectives and policies for District Plan and Proposed Plan. • Contrary to the Operative and Proposed Regional Policy Statements. • Effects of activity will be more than minor. • Effects cannot be adequately avoided or remedied or mitigated if consent granted. • Nothing unique about the proposal or site to justify granting the consent. Not a true exception. • Proposal is contrary to Part II of RMA. • Requests that the application be declined.	Yes.
5. Brian Miller	Oppose	• The proposal is contrary to the Otago Regional Policy Statement. • The regional policy statement is the overarching document that all Otago Councils must adhere to. • Contrary to both the current and Proposed District Plans. • Should be no more residential development in Outram until a proper sewage system is installed to replace present septic tank system. • Committee needs to understand the complexities of the High Class soils issues. • "Soils for Horticulture": by PD McIntosh, should be essential reading for Commissioners when considering applications involving high class soils. • Requests that the application be declined.	Yes.
6. Patricia Scott	Oppose	• Outram resident. • The Council should adhere to its own District Plan, especially when granting non-complying activities could set a precedent.	Yes.

		• Council has a commitment to protect high class soils, which it should uphold. • The existing decision of the Environment Court should not be revisited through the consent process for at least ten years. • Section 4 Sustainability: objectives listed. • Plan Change decision section 7.7 refers to "Demand for Additional Housing." • Situation in Outram has changed since 2013. NZ in middle of housing boom driven in part by speculation. • PC 16 (Formby Street) approved in September 2014 for 28 houses. If this application approved, there could be between 50 and 60 new houses in Outram; an increase of almost 25% of the current housing stock of 249 (2006 census). • No Outram-wide consultation as to whether such an increase in residential development is desirable. Locals often reluctant to submit on individual applications: lack time and expertise, and do not want to upset property owners. • Major change may happen incrementally without community being consulted. • Hearings Committee declined Private Plan Change 14 on 13 June 2013. Appealed to Environment Court, went to mediation. Costs might have played a part in Council mediating. • Mediation resulted in part of land being rezoned for 25 additional residential sites. Plan Change in effect 13 July 2015. • Applicant now submitting new application for rezoning the remaining land. • Decision to leave land rural was agreed to by Balmoral Holdings and Council under mediation ordered by the Environment Court. Seems disrespectful to Court and Council to revisit that decision. • Potential for residential development increased economic value of land. Tempting for land owners to seek to have the rural land rezoned. • Does not mean that Council should consider that a legitimate reason to make exceptions to the District Plan. • If this is to be an accepted reason for rezoning, to inflate value of land, then could see large sections of Taieri Plain subdivided. • Society need to ask itself if land should be valued solely by the housing market. • Land has community value as well as private. District Plan 4.2.4 Significant natural and physical resources. • Rule 4.2.2 requires level of infrastructural services to be appropriate for density, development and amenity values. • No stormwater or wastewater infrastructure. • Questions land's capacity to process wastewater of septic tanks. • Likely to be seepage of wastewater, nutrients and gut pathogens into the soil and river. • Pressure from development could lead to proposal to Council to build sewage system	
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		or connect to City system. If this happens, then more pressure for residential development and loss of rural land. • Granting consent will set precedent. Valuable high class soils on Taieri will be gradually overtaken by housing. • Each application considered separately, but cumulative effect on amenity values, soil and water quality, and loss of high class soils. • Quotes Council decision on Plan Change 14. • Future use of land on Taieri Plan is very significant at this time in history. Time of great change. World faces real threats: climate change, resource limitations, food security. • Council has responsibility, to present and future generations, for food security. • Taieri was a big supplier of fruit and vegetables to Dunedin. Many factors influenced decline in market gardening. Loss in market gardening has also led to loss of skills. • Dunedin largely dependent on importing fresh produce from Christchurch and north. Earthquake or land slips could put delivery of fresh produce to City at risk for weeks. Prudent for City to plan for a secure supply of fresh produce grown locally. • Small groups have increased supply of local food through community gardens. Home vegetable gardening also on increase. Individuals, restaurants and institutions have limited access to locally grown produce. • Otago Farmers Market give people access to fresh produce, but last local supplier of any scale will not be there in a few months. • If consent granted for houses on rural blocks smaller than 15.0ha, then food security is jeopardised. • Not enough to turn application down. Section 4 of District Plan, objective 4.2.5, Council to develop a comprehensive planning framework to manage the use and development of high class soils on Taieri. • Perhaps Council could set up a Land Trust which would lease small parcels of land to would-be growers. • Citizens could invest in Trust, and if Council owns land, it ensures security. • Requests application be declined.	
7. Heritage New Zealand	Support.	• Heritage NZ supports the proposed building restriction area. • There is a category 2 historic place (ref.3232) adjoining the subject site: Balmoral. • The house was part of the first subdivision proposal • Heritage NZ's previous involvement has been limited to encouraging and supporting the retention of Balmoral and its associated outbuildings and garden in one parcel to retain an appropriate setting. • The submitter supported Plan Change 14 on the basis that the subdivision layout supported this goal. Now Lot 26 SUB-2017-	No.

		32. • Balmoral homestead is visually prominent when approaching and departing Outram on SH 87. View for pedestrians generally obscured by mature hedges and plantings. • Development of Lots 37 to 53 has potential to interrupt views of the building from SH 87, thereby impacting opportunity for building to be appreciated by public. • The proposed view shaft is an appropriate mitigation measure, and should be adopted if consent granted. • If view shaft also intended to function from lower sealed track or footpath, the proposed 2.0m maximum height of plantings might need to be reduced. • Heritage NZ considers that the building restriction area would be more effective if it were extended to encompass a corresponding area of Lot 26 SUB-2017-32. • If not extended, it is possibly that the building could become obscured over time as a result of new plantings of buildings despite the restriction. Would negate benefits of building restriction. Extending view shaft would be worthwhile and effective. Marked up plan. • Lot 26 SUB-2017-32 is outside current application, but Heritage NZ considers the building restriction area should be extended if possible. • Site has been occupied since at least 1860s, and is an archaeological site. • The proposed development will largely avoid archaeological and heritage site which is most likely to be in vicinity of house. • There is a possibility of artefacts being uncovered during earthworks. Unlawful to modify or destroy an archaeological site. • Recommends that an attached Archaeological Discovery Protocol should be attached to the consent as an advice notice in order to ensure any archaeological sites discovered during works are managed appropriately. • Requests that if consent is to be granted, the building and planting restriction area be adopted via consent notices, and the accidental discovery protocol be included as an advice notice.	
8. Cheryl & Stewart Mitchell	Support	• Subdivision will be good for the community of Outram as town is short of building sections. • The land has been vacant for many years. • Requests Committee to be in favour of subdivision.	Not stated.

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[56] 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.

- [57] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.
- [58] Neither the District Plan nor the Proposed Plan allows any subdivision to occur as of right. All subdivisions are either restricted discretionary activities where the proposal meets all District Plan requirements or non-complying activities where the proposal does not. Council rarely declines consent for proposals that create new sites meeting the minimum lot size, access, servicing and other requirements of the District Plan. In such cases, the subdivision consent is a means of ensuring to Council's satisfaction that all necessary subdivision matters, e.g. infrastructure, are adequately addressed, and is not an indication that Council is opposed to the subdivision.
- [59] In this case, the proposed subdivision is a non-complying activity under the rules of both the District Plan and Proposed Plan because of the undersized nature of the new lots. They reflect Residential 5-zoning, but are Rural-zoned lots. No subdivision of this land into lots of the sizes proposed is anticipated under the rules of either Plan.
- [60] In regards to the proposed land use for the new lots, only the current operative District Plan rules are in effect or operative in respect of the zoning. The District Plan requires permits a single dwelling on a site provided the site is 15.0ha or larger. There is insufficient Rural-zoned land in all the proposed residential lots for a house to be established as a permitted activity. None of the proposed lots can be developed as a permitted activity. Furthermore, the subject site is already an undersized Rural-zoned lot prior to subdivision, and no dwelling can be established on this land as a permitted activity at all.
- [61] In summary, there is no permitted baseline to apply for subdivision, although it is likely a restricted discretionary subdivision proposal would be granted consent on a non-notified basis. There is no possible subdivision for this land which would be a restricted discretionary activity. No dwelling can be established on this land as a permitted activity prior to subdivision, or on the new lots after subdivision.
- [62] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7, 17.8, 18.6.1, and 20.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan:
- Lot Size and Dimensions
 - Easements & Encumbrances
 - Infrastructure
 - Hazards
 - NES Matters
 - Earthworks
 - Building Platforms and Bulk and Location

- Residential Units and High Class Soils
- Landscape
- Transportation
- Archaeological Sites
- Physical Limitations
- Amenity Values
- Conflict and Reverse Sensitivity
- Cumulative Effects
- Sustainability

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

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

- [64] This subdivision proposal seeks to subdivide the balance land of SUB-2017-32, being Lot 27, a Rural-zoned site of 2.17ha. Furthermore, this subdivision proposal will connect to the access arrangements created by SUB-2017-32, and therefore must follow, or be undertaken concurrently with, that subdivision. Recognising the close relationship between the two subdivisions, and in order to avoid potential confusion, the applicant has elected to name the proposed lots of this subdivision Lots 33 to 53 rather than Lots 1 to 20.
- [65] The consented subdivision development of SUB-2017-32 is largely in accordance with the Structure Plan of Appendix 8.7 of the District Plan, reproduced as part of this report in Appendix E. Because of the Structure Plan, Council had very little scope to change the layout or staging of that subdivision although a few procedural issues with, and limitations of, the design were apparent. The applicant sought to make a few changes, and alterations to the State highway frontage of the subdivision were negotiated in consultation with the NZ Transport Agency during the processing of the consent. Otherwise, the number of lots created, and their general position, was as determined by the Structure Plan.
- [66] One relevant change of relevance to this proposal is that the Structure Plan has the balance land contained in two lots, proposed Lots 27 and 28 where Lot 28 was a 1.07ha site for the disposal of wastewater from the new residential lots. As the new lots are to have individual septic tank systems, the need for a disposal field (Lot 28) was deemed redundant, and the land became part of proposed Lot 27, now the subject site of this application.
- [67] This proposed subdivision seeks to create a further 15 residential lots. The lots will range in size from 1050m² to 1510m², all being greater than 1000m² which is the minimum site size set for the Residential 5 zone. As such, the applicant intends that the development will reflect the existing residential activity of Outram. It is noted, however, that the subject site is at the extreme north-east extent of Outram township, and there is no immediately adjoining Residential 5 development except that of SUB-2017-32.
- [68] The proposed lots will all have legal and physical access. Most of the new lots will be accessed via the extension of the cul-de-sac to be created as part of SUB-2017-32, out to Holyhead Street. None of the submitters have raised the subject of the increased usage of Holyhead Street in their submissions. Three of the new lots will be accessed from State Highway 87 via an existing driveway within the State highway road reserve running more or less parallel with the main road. This existing entranceway onto State Highway 87 already serves the existing property of 51 Mountfort Street, the farming operation of the subject site, and seven of the future residential lots of SUB-2017-32 (decreasing to four at Stage 2 of that subdivision). The NZ Transport Agency, being the roading authority for State Highway 87, made a

neutral submission on the application but has concerns about the operation of, and safety risks to, the State highway..

- [69] The subject land is zoned Rural in the District Plan, and Rural-Taieri Plains in the Proposed Plan. Although all the surrounding area except the residential lots of SUB-2017-32 has rural zoning, there are no actual farming neighbours. The subject site is confined on its northern side by State Highway 1 and a substantial embankment, with the Taieri Historical Park situated at the top. On the southeast side of the subject site, the immediate neighbours are the floodbank and Taieri River. There is no visibility across the river to the farming properties on the far side because of the flood bank. There is one neighbour to the northeast, 51 Mountfort Street, which is zoned Rural but is essentially a residential property of 3246m².
- [70] The proposed lots are all considerably undersized for the zoning of the District Plan and Proposed Plan. The subject site, Lot 27 SUB-2017-32, is already a significantly undersized lot, and has no existing or consented residential use. Its creation was acceptable at the time of SUB-2017-32 because of the Structure Plan expectations, and because it contains all the Rural-zoned land of the present 94 Holyhead Street in one site. Lot 27 can be farmed, but has little else in the way of options for permitted uses.
- [71] On page 21 of the application, the applicant suggests that the residential use of the new lots is acceptable because the surrounding landscape is residential in nature, anticipated to become residential in nature, or is occupied by infrastructure activities (the floodbank). The applicant considers that the 'in-fill' of the land with residential activity is a sensible and appropriate use of the land. This is not the same argument as suggesting the rural block is too small to be utilised effectively and economically, and house sites is an acceptable alternative, and in fact, there does not seem to be any discussion in the application regarding the appropriateness of subdividing Rural-zoned land into residential lots except within the analysis of objectives and policies.
- [72] I note that the only reason there is residential development immediately to the southeast is because the applicant mediated an agreement with the Council after the declining of the private plan change of 2013. The Council consented to half the Balmoral property being zoned Residential 5 on the understanding that the northeast portion would remain Rural. This proposal seeks to override that agreement as mediated by the Court, using the development of SUB-2017-32 as part justification.
- [73] The proposed layout of the subdivision is adequate for a residential development although there is some conflict in thought as to whether it is better to direct the additional traffic through to Holyhead Street or the State highway. The main road has a greater capacity to absorb the additional vehicle movements, but using this road also increases the potential for significant road safety risks. The use of Holyhead Street is expected to be safer for road users, but does introduce vehicles onto a relatively quiet street. As a residential development, the proposed layout is therefore considered to be acceptable. As a Rural-zoned development, the layout is completely non-representative of what the District Plan seeks for this land.

Easements (18.6.1(i)) and Encumbrances

- [74] As the subdivision SUB-2017-32 site has not yet been completed, there is currently no title for the subject site of this application. Therefore, it is not definite which easements will apply to this land, although consideration of the existing easements for the present 94 Holyhead Street and those easements required by the consent of SUB-2017-32 will provide a good indication of what to expect.
- [75] To keep it simple, there are no existing easements registered on the title of Lot 2 DP 20759 (the present 94 Holyhead Street). Likewise, the consent conditions of SUB-2017-32 give no reason to suppose that any new easements will be created over, or in

favour of, Lot 27 SUB-2017-32 (the subject site of this application). However, there will be a 20m wide building line restriction imposed along the southeast side of Lot 27 to protect the integrity of the floodbank. This building line restriction will carry down automatically onto proposed Lots 33 to 37 but is not expected to unacceptably compromise the building potential of the lots.

- [76] The application plan only identifies two new easements for this subdivision. One is a right of way over the leg-in of proposed Lot 37 in favour of Lots 36 and 38, and the second is the use of the existing access, Access Lot 30 SUB-2017-32, in favour of Lots 45 and 46. If this subdivision follows SUB-2017-32, the creation of this second right of way easement then becomes dependent on the agreement of other parties as it is over land outside of this subject site. In this case, this is unlikely to be an issue given that the two subdivision proposals are promoted by the one applicant, and SUB-2017-32 has not yet been completed. There is still time to create a right of way, if necessary, as part of SUB-2017-32 before the Access Lot 30, and the properties it serves, pass into different ownership. If a right of way in favour of Lot 27 is created at the time of SUB-2017-32, it will need to be cancelled in respect of all the new lots of SUB-2017-49 except for proposed Lots 45 and 46 as part of this subdivision consent.
- [77] The NZ Transport Agency has indicated it would prefer to have all the lots served for access via the new road rather than directly to the State highway road reserve. This idea has been picked up by Council's Transport department which has recommended a condition to this effect. If access for Lots 42, 45 and 46 is to be provided via the cul-de-sac, then new right of way easements are likely to be required, and will need to be shown on the application plan in a Memorandum of Easements. In turn, the proposed right of way easements over Access Lot 30 SUB-2017-32 will not be required.
- [78] No service easements are shown on the application plan. These can be created as necessary at the time of subdivision to ensure that all lots have legal access to services. For any new services to be vested with Council, easements in gross will be required.

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

- [79] The application notes that the subject site does not have any reticulated water supply, but it is anticipated that the subdivision of SUB-2017-32 will introduce public water infrastructure into the immediate area which will be available for connection.
- [80] Stormwater is currently drained from the land by two catchment flows. One drains to the northwest to the existing roadside swales in Mountford Street and along State Highway 87. The rest of the land drains in a southwest direction to ponding area near the end of Holyhead Street. This area is to become Lot 31 of SUB-2017-32, and will vest as public reserve as a detention pond area. The water there is to be managed in part through natural ground soakage, and partly by pumping system to the Taieri River. The subdivision works of SUB-2017-32 will increase the capacity of this natural ponding area, and install a new stormwater pumping station to discharge water at a rate of 15 litres per second across the flood bank and into the river. This infrastructure is to be installed prior to the development proposed as part of this application.
- [81] The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She notes that a review of Council's GIS records shows a A 50mm and 200mm diameter water pipe and 375mm diameter stormwater pipe in Mountford Street, and a 125mm and 25mm diameter water pipe in Holyhead Street. The property is zoned rural but is within the Water Supply Zone Boundary. The Outram water scheme is an on-demand scheme that currently services both the township and some rural areas, as shown on Figure 1 of the Water and Waste Services Business Unit's memorandum attached in Appendix B of this report.

Water Supply

- [82] As the proposed subdivision is located within the rural zone, 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. However, the applicant has proposed connecting to the Council water supply via the installation of new infrastructure from the new public supply installed as part of SUB-2017-32.
- [83] The Dunedin City Council Water Bylaw 2011 provides for connections to the water supply network. For properties which are zoned Rural but are situated within urban water supply area boundaries, the Council has the discretion to supply water as an "Extraordinary Supply", but there is no obligation to do so. The Consents and Compliance Officer advises that when considering the servicing of Rural-zoned land, both the ability to supply the development and any planning concerns are considered.
- [84] The Water and Waste Services Business Unit notes that, operationally, each lot of this proposed subdivision is able to be serviced due to recent pipe renewals. However, City Development generally do not support servicing in the Rural Zone. The Rural Zone requirements of the District Plan seek to protect rural productivity and amenity, and as such urban development in rural zones is carefully managed. City Development considers that the provision of reticulated infrastructure can lead to more intensive urban development and that water tanks are generally appropriate in the rural environment.
- [85] The Council operates a number of water schemes designed to supply water to rural land, including Outram. City Development supports water connections for rural purposes on rural sites, but is opposed to the provision of water to a residential development on a rural site. Certain Council staff and the Infrastructure Services and Networks Committee (IS&NC) are delegated to make such decisions, but a decision on water servicing has not yet been made due to planning concerns about the potential flow-on effects of providing servicing to rural land. The Consents and Compliance Officer advises that it is appropriate for the Hearings Committee to consider these matters when making their decision on whether to approve or decline SUB-2017-49. Should consent be granted, the decision will be used by the Water and Waste Services Business Unit to inform a decision on servicing under the Water Bylaw.
- [86] If resource consent is granted, and should water servicing of those lots be approved under the Water Bylaw, the Water and Waste Services Business Unit will require detailed engineering plans of the proposed new water infrastructure to be vested in Council. Each lot will need to be serviced from an individual Point of Supply as defined by the Dunedin City Council Water Bylaw 2011, with each Point of Supply having a water meter installed as an extraordinary supply. These will require backflow prevention devices. All new water service connections to the proposed development must be in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.

Fire-fighting

- [87] All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. There are fire hydrants on Holyhead and Mountfort Streets. The installation of hydrants will need to be considered when water infrastructure extensions are being designed. Based on SNZ PAS 4509:2008 a W3 (25l/s) zone requires a Fire Hydrant within 135 m and a second within 270 m.

Stormwater

- [88] The applicant has proposed stormwater flows from the developed site to be catered for via the stormwater detention pond approved under SUB-2017-32 which discharges to the Taieri River. The applicant has offered the alternative of on-site retention as a second option.

- [89] The Water and Waste Services Business Unit requires a Storm Water Management Plan (SWMP) be provided to clearly detail the proposed stormwater system/s. The SWMP must ensure proposed development will not exacerbate any current capacity or surcharge issues within the area. The SWMP is to include the necessary technical details to show that the system will meet the requirements of NZS4404:2010 and the Dunedin Code of Subdivision and Development 2010. The SWMP will need to be submitted and accepted by the Asset Planning Engineer, Water and Waste Services prior to any construction commencing.

Wastewater

- [90] There are no Council-owned reticulated wastewater services in this area available for connection. The applicant proposes the installation of Hynds Lifestyle aerated wastewater systems and effluent disposal areas for each residential lot. Any onsite effluent disposal shall be to a wastewater treatment and effluent disposal system which is to be designed by an approved wastewater treatment and effluent disposal system designer. The application also proposes the use of low-flow devices fitted within the new dwellings. Proposed Lots 33 to 46 and 53 will require a septic tank for each new lot, to be designed by an approved septic tank designer. Consent from the Otago Regional Council will be required.

Conclusion

- [91] The Water and Waste Services Business Unit has not identified any concerns about the servicing of the new lots and new development, subject to conditions consistent with the above points.

Submitters

- [92] The Otago Regional Council has provided a relatively brief submission opposing the subdivision stating that the proposals for stormwater and wastewater disposal are inadequate, and that the development has the potential to contaminate groundwater. No details are provided within the written submission as to why the Otago Regional Council considers this to be the case.
- [93] The Otago Regional Council was more forthcoming in an email to Council dated 19 May 2017 regarding the earlier subdivision of SUB-2017-32. In that email, the Otago Regional Council advises that proposing to run a pipe across a floodbank for piping and disposing of storm water to the Taieri River would require both bylaw and designation approval from Otago Regional Council. Considerations will include:
- how that may affect ORC's floodbank maintenance and access operations; and
 - maintenance and possible risk from leaks in this stormwater piping.

The Otago Regional Council requests that the applicant discuss this aspect of the proposal with the Council further.

- [94] Regarding wastewater management, the Otago Regional Council noted the following:

'The proposed subdivision is partially, or completely over a GPZ-A [Ground Protection Zone A]. If individual onsite treatment systems are to be used, then some of the properties are going to require resource consents for their septic tanks. ORC is focused on water quality, and a plan change related septic tank plan change is proposed.'

'The applicant may wish to further consider the following potential benefits of a cluster waste-water treatment plant rather than individual on-site treatment systems;'

- *It benefits the community by ensuring better environmental outcomes as cluster systems can produce a higher quality effluent than individual systems; and*
- *It benefits property owners by reducing the maintenance, consenting, and compliance requirements and costs.'*

- [95] The Groundwater Protection Zone covers proposed Lots 33 to 37, 53, and parts of Lots 40 to 44. These properties will require resource consent from the Otago Regional Council for their septic tanks.
- [96] Another submitter questions whether the Council knows the capacity of the residential land to continue to process the wastewater going into septic tanks. The submitter considers there is likely to be seepage of wastewater, nutrients and gut pathogens into the soil and the Taieri River, and new residential development will increase the pressure. As development increases, the submitter believes that there could be a proposal for the Dunedin City Council to build a sewage system for Outram. I note that there is currently no scheme to install a community sewage system for Outram and the Water and Waste Services Business Unit has not identified any issues in terms of on-site servicing in the area to indicate that such a scheme is required.
- [97] A submission from neighbours on Holyhead Street states that the submitters do not want a storage pond and pump station opposite their house, and notes that there could be possible noise from the pump. The installation of the detention pond and pump is, however, a component of SUB-2017-32, as required by the Structure Plan approved by the Environment Court, and the granting or declining of this consent will be incidental to the existence and operation of this ponding area.
- [98] Overall, the proposed development of the subject site will be self-serviced except for water supply, and is not expected to create any issues for the existing infrastructure of Outram.

Hazards (18.6.1(t))

- [99] The Consulting Engineer, Stantec, has considered the application in relation to the Hazards Register, street files and available aerial photography. He notes that the Otago Regional Council report: *Flood hazard on the Taieri Plain, Review of Dunedin City District Plan: Natural hazards First revision: August 2015* places the site within Area 1B, Above High tide level.
- [100] The Consulting Engineer has not commented on the appropriateness of developing the land in terms of the flood protection risk and stormwater treatment, or the need to establish a minimum floor level for the development as a whole. He considers that these matters are more appropriately addressed by Council's Water and Waste Services Business Unit or the Otago Regional Council.
- [101] In terms of natural hazards affecting this land, the Consulting Engineer comments that the site is recorded on the GNS Assessment of Liquefaction hazards in Dunedin City, dated May 2014, as being within:
- Domain C. The ground is predominantly underlain by poorly consolidated marine or estuarine sediments with a shallow groundwater table. There is considered to be a moderate to high likelihood of liquefaction-susceptible materials being present in some parts of the areas classified as Domain C.
- [102] Underlying soils have a potential for amplified movement and liquefaction during a significant seismic event. The cases for seismic loading are normally addressed at building control stage. The following requirements are noted:
- The Dunedin City Council Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1. This verification

will require site investigation in accordance with the standard, potentially including dynamic cone testing to 10m depth to quantify the potential for liquefaction for each dwelling.

- Specific foundation design may subsequently be required or, if the assessed potential movement is significant, specifically designed ground improvement works may be more cost effective.

[103] Stantec generally recommends that, for larger subdivisions, the requirement to quantify this risk should lie with the developer. The Consulting Engineer believes that the extent of the proposed subdivision is sufficient for this efficiency to be recognised whilst under single-title, rather than the purchaser to have to assess this risk individually. In conclusion, Stantec does not oppose the subdivision subject to conditions consistent with the above points.

[104] Regarding the natural hazard of flooding, the land is part of an area protected by the flood bank system, and the Building Act 2004 requirements may be considered sufficient to address the residual risk of inundation. However, section 106 of the Resource Management Act 1991 allows the Council to decline a subdivision consent on the basis of inundation of the subject site from any source if the risks are considered unacceptable. The matter of flooding of this land therefore should be considered, especially in light of the surface flooding that occurred during the recent rainfall event in July 2017. This extreme weather even happened after the close of the submission period for this consent but before the writing of this report.

[105] I visited the site on 22 July 2017 on Saturday 22 July 2017, and again approximately 24 hours later, taking a series of photographs which are attached in Appendix D of this report. There were two significant areas of surface flooding affecting 94 Holyhead Street. The first was across the land of SUB-2017-32 in the area of proposed Lot 17, 18 and 31. From Council's GIS photo and contouring, I estimate the ponding to be about the 8.0m contour, and covering an area of over 5000m². Lots 17 and 18 are to be residential lots, and Lot 31 is the proposed stormwater detention pond. All of this land is within SUB-2017-32.

[106] The second area of flooding was on the opposite side of the site, next to the access driveway within the State highway road reserve. It is more difficult to determine the level, and the area, of the surface flooding in this location but I estimate it to be about the 9.2m contour, and covering about 3500m² of the land of SUB-2017-49 (affecting proposed Lots 42 to 46), as well as a portion of the land of SUB-2017-32 (in the region of proposed Lots 6 to 8). The photos of the flooding were forwarded to the applicant's agent on 24 July 2017.

[107] The applicant's agent sought a second Fluent Solutions report specifically to comment on the implications of the surface flooding. The report, dated 31 August 2017, makes a number of comments about the flooding issues affecting the site and the wider area, stating:

'The proposed SDP [stormwater detention pond] has the potential to benefit the confined area to the west and flooding to the south of Holyhead Street. Any additional cost for serving areas outside the site, however, should fall to the Dunedin City Council as an improvement to the stormwater network in Outram.'

[108] The report concludes that the observations of 22 July 2017 flood event have confirmed both the necessity for the proposed stormwater pump and the benefits of a pumped stormwater discharge to the river. However, reliance on disposing stormwater from the site to the west under State Highway 87 could be misplaced, and further stormwater modelling will be required to quantify the effects on this area to the west. Therefore, while the floodbank protects the subject site from significant flooding, there

is the potential for surface flooding to affect the new lots, particularly on the western side of the subdivision.

- [109] The above report and the preliminary stormwater management plan submitted with the application have been reviewed by Council's Development Engineer, Water and Waste Services Business Unit in an email dated 19 September 2017. The preliminary stormwater management plan makes the assumption that the culvert under State Highway 87 is a 375mm diameter pipeline without proper investigation. The report also assumes that post-development flows from the site will need to match pre-development flows although the surface flooding that has occurred pre-development means that flows leaving the site post-development realistically needs to exceed pre-development rates. Furthermore, no consideration of how high water flows in the Taieri will impact on groundwater levels has been done. The report does not provide calculations or details about the proposed collection system, or the proposed pump design, and the approvals from the Otago Regional Council for earthworks along the toe of the floodbank and to pump stormwater over the top of the floodbank are not provided.
- [110] Regarding, the second Fluent Solutions report, the Development Engineer has concerns that the model used for the stormwater management plan did not include the topography to the west of the site or the hill country to the north, as it would be necessary to consider flows into the site from outside the area as well as the flows from the site downstream. The report needs to address by robust investigation and analysis the capacity of the drainage culvert under State Highway 87. The Development Engineer also notes that the developer has not considered the impact of the flooding risk on the proposed on-site wastewater management systems. He considers this to be a 'serious concern'.
- [111] Accordingly, while significant flooding from the Taieri River is unlikely to occur, more localised surface flooding might be a concern for the new lots, and properties upstream and downstream. In the absence of definitive calculations and details, it is not possible to say with confidence that the development will have no adverse impact on surface flooding in this location.

NES Matters

- [112] The application was submitted with a Preliminary Site Investigation, dated 24 January 2013, as prepared by **Spiire**. The primary purpose of the report was to investigate whether contaminants are present on the subject site at high level warranting further action as part of its development. The report notes that the history of use of the site as a market garden indicates that the site might be construed as a HAIL site, and sampling of soils was undertaken to substantiate the findings of a desktop study which found no evidence of previous activities causing contamination. There were four soil samples taken from across the site, and composited in one sample for analysis.
- [113] Analysis of the samples for heavy metals and pesticide residue indicated that there were no contaminants present at levels above soil guideline values appropriate for residential use. Spiire concludes that there are no triggers to indicate that the site is contaminated. The report states:

'Accordingly, Spiire assess that by the standards of best practice there is no basis for recommending a detailed site investigation and recommend no further investigation for contaminants be undertaken at the site. This assessment is subject to limitations ... and it is important that Balmoral Developments Limited ensure that these are understood and that additional advice is sought, if appropriate, to manage any undiscovered risks.'

[114] The limitations noted in the report relate to the fact that no investigation will be thorough enough to preclude the presence of materials which might be considered hazardous presently or in the future.

[115] The Spiire report is the same as that submitted for the subdivision of SUB-2017-32, and was assessed at that time by Council's Consulting Engineer, **Stantec**, in a memorandum to Council received on 19 May 2017. In that assessment, Stantec considered the Spiire report to be a '*... thorough and well-reasoned PSI which reaches unequivocal evidence-based conclusions that are fully explained and supported.*' Stantec noted that the soil sampling was rather limited in its extent, but considered that the sampling was all that was necessary for the 'preliminary' site investigation. The Consulting Engineer also considered that the results, coupled with other evidence, meant no additional sampling is necessary. The Consulting Engineer comments:

'The PSI concludes, correctly, that based on the information obtained it is "highly unlikely" that there will be a risk to human health if the proposed sub-division activity to create residential lots is undertaken on the subject land ... The PSI prepared by Spiire to support the application is well reasoned and supported by detailed and appropriate evidence, to the extent that the conclusions reached with respect to the non-HAIL status of the site are conclusively established.'

[116] The **Otago Regional Council**, reviewing the same report, did not agree. The Otago Regional Council noted that market gardening has occurred on-site from approximately 1940 to 2004, and it is more than likely that persistent pesticides have been used at some point. The limited sampling from the Preliminary Site Investigation detected relatively low level DDT residues which support this conclusion. The Otago Regional Council has listed the site as a 'Verified HAIL' site for the following reasons:

'The limited sampling within the PSI is not sufficient to determine a contamination status for the property. The four samples taken may not be representative of the disposition of all soils on site. The pattern of market gardening seen in the 2003 Google Earth image shows many different cultivated areas which can be subject to different spray regimes. It also show two additional glasshouses, buildings, now removed on the northern edge of the site. The site investigation did not target any of the potential hot-spots which may be expected at the site, such as glasshouses, spray sheds or mixing areas.'

[117] Council's Consulting Engineer, **Stantec**, reviewed the comments of the Otago Regional Council in a second email dated 19 May 2017. He was of the opinion that the Otago Regional Council's conclusions are very conservative as the levels of DDT and its decomposition products are very low, although not zero. While hot-spots might have been missed by the limited sampling, the ubiquitous use of other persistent pesticides would have shown up in the samples in the same way that DDT has. The Consulting Engineer did not consider that persistent pesticide use at this site has occurred other than some application of DDT. He notes that DDT was used for grass grub control from the 1920s, and the presence of DDT in the soil samples could relate to the site's pasture use prior to 1940.

[118] The Consulting Engineer did not consider that DDT was likely to have been applied to the site in a manner which would create hot-spots. Spillage from loading the hopper (for distribution) could have occurred; however, Stantec considered this risk to be low. Stantec also took into account the summary of the site's use by the current owner, Neville Ferguson. While the Consulting Engineer agreed with Spiire's conclusion about the site not being a HAIL site, he also noted that Spiire was unsure whether or not the NES should apply given their view that the HAIL activity of persistent pesticide storage and use was 'unlikely'. The Consulting Engineer recommends:

'From DCC's perspective I think a consent is required under the NES for the proposed subdivision of the land. Given that a DSI does not exist for the land such a consent would attract discretionary status. However I do not believe any onerous conditions will be necessary on the consent because I agree with Spiire's contention that the subdivision of this land presents a low risk to human health and the site is "currently suitable for residential living, inclusive of consumption of up to 10% of dietary produce from produce grown on site".'

- [119] Accordingly, consent under the NES was issued for subdivision, change in use, and the disturbance of soils, at this subject site in relation to SUB-2017-32. Only one condition was imposed for a soil management plan to address NES concerns. However, this does not negate a duty by the developer to undertake the management of soil contamination appropriately, including further investigation and remediation, should there be any indication of soil contamination discovered during the subdivision works.
- [120] Council's Consulting Engineer, **Stantec**, reviewed the situation and the available documentation again in an email dated 4 July 2017, in respect of the additional 15 residential lots proposed by SUB-2017-49. He notes that Stantec's comments of 19 May 2017 are equally applicable to this application. The Consulting Engineer recommends a condition for consent requiring the preparation of a Soil Management Plan, with this to be reviewed and signed off as acceptable to the Council.
- [121] Another assessment prepared by **EC Otago Ltd** was submitted to the Council on 29 September 2017. EC Otago Ltd undertook extensive soil sampling across the subject site, noting that the preliminary site investigation of 2013 (Spiire) with its four soil samples, was very limited. While the Spiire report concluded that there were no triggers to indicate that the site was contaminated, it was not possible to fully exclude the possibility of contamination. The Otago Regional Council came to the same conclusion that it was not possible to conclude that the site was free of contamination, particularly given the long history of market gardening on the land from the 1940s to 2004.
- [122] The soil sampling of EC Otago Ltd involved 56 locations in a grid across the site (including the land of SUB-2017-32), utilising both composite and individual samples. The samples were tested for the priority heavy metals and Organochlorine Pesticides (OCPs). All samples were shallow at less than 10cm depth. EC Otago Ltd has analysed the results and comment that the results across the site show a generalised low level of DDT contamination typical for market gardens, as well as elevated arsenic, lead and zinc associated with the farm buildings. The results are all below the Residential SCSs/SGVs, indicating acceptable risk for residential use of the site. The report concludes:

'Based on information provided within this report, this assessment concludes that the site meets the current standards for residential use, and acceptable risk to human health, and confirms that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land, as described herein. The sampling results indicated that a contaminated soil management plan is not required.'

- [123] The **Otago Regional Council** peer reviewed the EC Otago Ltd report on 2 October 2017. It agrees that all the results were below the relevant soil contaminant standards and there is no risk to human health under the proposed residential land use. The report concludes: *'The results from the detailed sampling exercise, which is supported by a preliminary site investigation completed in 2013, are sufficient to confirm that the site is suitable for residential land use.'*
- [124] Council's Consulting Engineer, Stantec, reviewed the EC Otago Ltd report on 10 October 2017. He noted that the report did not meet all the requirements of a Detailed

Site Investigation (for example, it is not signed off by a suitably qualified and experienced practitioner (SQEP)), but combined with the Spiire Preliminary Site Investigation, all the relevant matters for a Detailed Site Investigation are met. Neither report can be signed off by a SQEP as neither report on its own is adequate. The Consulting Engineer comments:

'This is an example of a situation where strict adherence to the NES would potentially make the Council seem to be unnecessarily bureaucratic and I believe common sense must prevail. I would also note that we are in no way setting a precedent or lower standard by taking this approach because all the evidence from a DSI is present – it is not just present in a single document.'

- [125] Accordingly, the subject site is considered to be suitable for subdivision and the change of use, and no further testing or soil remediation is considered necessary. While the Consulting Engineer considers that the two reports combined are adequate as a de facto Preliminary Site Investigation, it has been decided to issued consent as a discretionary activity in order to avoid any suggestion of inappropriate processing.

Earthworks (Rule 17.7.5(ii))

- [126] The proposed subdivision requires the stripping of 1700m³ of topsoil to a depth of 400mm over 4250m² from the new road, right of way and pedestrian accessway. Half of the topsoil is to be reinstated and the rest will be removed from the site. 1275m³ of cut to waste material will be created over the same area, to a depth of 300mm. The maximum depth of the clay excavation will be 500mm, and all earthworks will maintain a shallow grade of 6H:1V. The proposed earthworks significantly breach the scale thresholds for volume, although these earthworks are occurring over a large area and the actual change in ground levels are, at most, no more than a large step.
- [127] The Council's Consulting Engineer, Stantec (then MWH), assessed the earthworks of SUB-2017-32 at the time of that consent, and provided comment in an email dated 19 May 2017. Stantec advises that it has no additional comments to make in respect of this subdivision proposal. Accordingly, the assessment below incorporates the previous advice given at the time of SUB-2017-32.

Design and engineering of retaining structures and earthworks.

- [128] The proposed earthworks are concentrated along the roading and accesses. Although this subdivision will utilise the stormwater detention pond, the pond will be constructed at the time of SUB-2017-32, and the associated earthworks do not need to be considered as part of this subdivision proposal.
- [129] There will be no retaining walls or other earthworks structures constructed as part of this subdivision, and all batters will be of gentle grade. While approximately half of the topsoil will be removed from the site as part of the project, all of the excavated clay material will be retained on-site and will be re-distributed on the residential lots to the northwest of the proposed cul-de-sac, but not to any significant depth. This will help raise the ground level slightly of those residential lots which were subjected to surface flooding in the last extreme rainfall event.
- [130] While the proposed earthworks breach the scale thresholds set by the District Plan for permitted and controlled earthworks, this is largely a result of the large area over which the earthworks are being undertaken. The earthworks will involve a relatively modest change in levels, and will not create any steep batter slopes. No earthworks are proposed in close proximity to external boundaries of the subject site.
- [131] Council's Consulting Engineer, STANTEC, has considered the proposed development of 94 Holyhead Street and recommended at the time of SUB-2071-32:

- *Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*
- *The extents and thickness of any un-engineered fill should be marked on an as-built plan for the information of future landowners.*

Effects on the stability of land and buildings.

- [132] The subject site is gently sloping and there is no expectation that the proposed earthworks will affect the stability of the site or adjoining properties. The topsoil removal will be to an average depth of 400mm, and will be taken from the road, access lot, and pedestrian accessway. The cut into clay material will be confined to much the same areas.
- [133] The closest existing neighbouring property to the earthworks will be 51 Mountfort Street. The original owner of this property has provided affected party approval to the proposal, and accordingly, pursuant to section 104(3)(a)(ii) of the Act, the Council must not have regard to effects on this party. While there is now a new owner who has not provided affected party approval, the end of the right of way (being the closest point of earthworks) will still be a good 20.0m from the boundary of 51 Mountfort Street and will not have any effect on the stability of this neighbouring property or buildings. The lots of SUB-2017-32 are not yet developed. Overall, the gentle batter grades of 6H:1V are not expected to undermine any adjoining property.
- [134] The Otago Regional Council manages the Taieri River floodbank to the southeast of the subject site. A 20m wide building restriction area associated with the floodbank will extend into the subject site and will affect proposed Lots 33 to 37. Any subdivision earthworks occurring within these lots will be at the opposite end in order to form the road, and as such, will have no implications for the floodbank as there will be no earthworks undertaken within the building restriction area. Subsequent site development of these lots will be controlled in part by the building restriction line through these lots.
- [135] Even though the subdivision is being undertaken outside of the mapped excavation sensitive zone, the Otago Regional Council, in its email of 19 May 2017 for SUB-2017-32, expects that the Dunedin City Council will carefully consider the need for a high level of expertise and assessment of the proposed earthworks. Earthworks can lead to a compromising of a floodbank's integrity during a flooding event (such as via the effects that result in 'piping'). In this case, such a failure would mean the Outram settlement would be put at greater risk from flooding.

Effects on the surface flow of water and on flood risk.

- [136] The proposed subdivision involves an almost level subject site. The CPG Infrastructure Reports dated December 2011, submitted with the application, identifies the site has having a slight crown so that the western half drains to the west, and the eastern half of the site drains to the east. Water naturally ponds near the Holyhead Street entrance to 94 Holyhead Street in the location now promoted as the stormwater detention area of SUB-2017-32.
- [137] The application states that the stormwater from the new lots is to drain to the stormwater detention pond of SUB-2017-32. There is an existing natural flow path along the base of the floodbank which will drain the eastern lots towards the pond, and any surface flow towards the north-western boundary of the subject site from the other lots will be redirected by pipes back to the stormwater detention pond.
- [138] The applicant has submitted two reports from Fluent Solutions (as discussed above the Hazards Section) and another report by CPG New Zealand Ltd, dated December 2011,

which discuss the stormwater drainage of the new subdivisions in some detail. The CPG New Zealand Ltd report concludes:

'The proposed stormwater management concept represents very little change to the current stormwater drainage flows and disposal locations except in the case of an extreme event where there would be a small reduction in flows to the existing Outram stormwater system.'

- [139] As such, the proposed subdivision is not expected to adversely interfere with existing surface flows although it is not clear whether there will be any change to the surface flooding risk for the subject land or other areas.

Effects on underground utilities.

- [140] There are no underground utilities within the subject site which are expected to be affected by the proposed earthworks. There are no Council-owned reticulated services in the location of the proposed earthworks.

Adverse effect on the amenity of the neighbouring properties.

- [141] There will be temporary adverse effects on the amenity of the neighbouring properties during the construction period as there will be possible noise, vibration, and dust effects to address. Provided the developer confines construction works to the normal working hours, and actively manages dust effects, the effects of the proposed works are considered acceptable.

- [142] The closest neighbour to the proposed earthworks is 51 Mountfort Street. There is no change in ground level anticipated in close proximity to their boundary, and the fact that the subject site is more or less level means no change is necessary either as part of the subdivision works or the establishment of a building platform on the nearby lots.

Effects on visual amenity and landscape.

- [143] The subject site is currently a farm paddock with some cropping on the urban edge of Outram. The proposed earthworks are to develop the land as a new residential subdivision, and will be relatively minor in terms of changes to ground levels. I also note that the land has been cropped as a market garden for many years where exposed soils have often been the standard appearance of the property. For these reasons, the proposed earthworks are not expected to have an adverse effect on the visual amenity and landscape.

Effects on any archaeological site and/or any cultural site.

- [144] There are no known archaeological or cultural sites in this location which are likely to be affected by the earthworks.

Effects on the transportation network, caused by the transport of excavated material or fill.

- [145] Approximately half of the topsoil stripped from the site will need to be removed from the subject site and disposed of to an appropriate location. There may also be some removal of clay material if it proves to be unsuitable for foundation works on the new residential lots. As such, heavy vehicle truck movements to and from the site are to be anticipated.
- [146] The application does not detail the proposed route for the trucks but there are two options available. The most direct route from the subject site will be to State Highway 87 via the existing intersection. The NZ Transport Agency manages this road, and will have the authority to place conditions on its use as access to the site during the construction period.

- [147] Alternatively, the site can be accessed via Holyhead Street and the new cul-de-sac of SUB-2017-32. This is a quieter road with no through traffic, and there will be fewer safety issues arising from trucks crossing onto the road from the site, but it is also a residential street, and heavy truck movements along this road are less acceptable than they would be on a main road. The most likely route taken by the trucks would still result in trucks using the State highway, accessing it at the intersection of Holyhead and Mountfort Streets. The Outram shop is situated at this intersection and there are already complicated traffic movements occurring at this location as a result. Therefore, it is recommended not to use this route, although this is not a condition of consent.
- [148] The truck movements are unlikely to create any congestion on the State highway but could be inappropriate traffic for the quieter Holyhead Street. Regardless of the route taken, the developer will need to keep the road clear of debris. Overall, the trucking of topsoil from the site is not expected to adversely impact on the transportation network.

Effects from the release of sediment beyond site boundaries, including transport of sediment by stormwater systems.

- [149] The developer will be required to manage the release of sediment from the site during the earthworks period in accordance with the accepted best practise for sediment management.

Cumulative effects relating to any of these matters.

- [150] The proposed earthworks are not anticipated to have any adverse cumulative effects. The earthworks period will be temporary during the construction of the subdivision facilities. Earthworks associated with the development of the new lots themselves after subdivision are not part of the consent sought. Should future earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

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

- [151] No specific building platforms have been promoted for the new lots. This area of Rural-zoned land is not within a Landscape Management Area or overlay in either of the District Plans, and there are no geotechnical issues affecting this land which will require housing to be confined to specific locations.
- [152] While the new lots are residential in scale, the underlying zoning is Rural, and the District Plan specifies front yards of 20.0m and side and rear yards of 40.0 for this zone. Accordingly, unless the yard spaces are reduced for the new residential lots, none of them can be developed with residential activity. The applicant proposes that the Residential 5-zone yards be adopted for the new lots, so that front yard spaces are 4.5m, and side and rear yards are 2.0m. If the subdivision is to be granted, then it is my view that the Residential 5-zone yards are acceptable and in accordance with the rest of the Outram residential area.
- [153] The reduced yards will also need to apply to the boundaries of proposed Lots 37 and 38 shared with 51 Mountfort Street or it will be impossible to develop these new lots. While the original owner of 51 Mountfort Street has provided affected party approval, there is now a new owner. I understand that the applicant has spoken with the new owner although no affected party approval or late submission has been received at Council. The reduced yards could mean there will be another house built approximately 8.0m from the house of 51 Mountfort Street, whereas compliance with the zone provisions would require a house to be at least 46.0m distant. This is a significant difference. The applicant's agent advises that the applicant is willing to have a wider yard space along the boundary with 51 Mountfort Street if the proposed 2.0m yard is unacceptable.

- [154] Although there are no building platforms proposed, the applicant has identified two areas where building is to be restricted. One is the 20.0m strip along the base of the floodbank, to be maintained for reasons to do with protecting the floodbank structure. This building line restriction will be imposed over the subject site, Lot 27, at the time of SUB-2017-32, and will be an existing encumbrance at the time of this subdivision. It will pass down automatically onto Lots 33 to 37.
- [155] The second area is situated over Lots 42 to 46, and Lot 53, and is centred on the proposed pedestrian accessway, Lot 50. The purpose of the building restriction area is to maintain a view shaft from State Highway 87 across the site to the existing homestead of 94 Holyhead Road as this house is an historic building having some presence and style. Only fences 1.2m or lower, and vegetation under 2.0m in height, will be permitted within this view shaft. If this restriction is registered on the title as a consent notice, a future owner will be aware of this requirement at the time of purchase, and the restriction does not impact on the buildable areas of the lots unacceptably. For these reasons, I consider that the proposed building line restriction is acceptable, and will have no adverse effects.
- [156] Enforcing the 2.0m height limit for vegetation could be challenging for the Council because of the potential for ongoing issues with growth maintenance of vegetation, but at least there will be a mechanism by which this can be done, if required. Alternative mechanisms such as a private covenant might need to be explored. Heritage New Zealand has requested that the view shaft be extended into Lot 26 SUB-2017-32, the new house site itself, as there is still scope for the house to be obscured by large shrubs and/or trees within its own site. Lot 26 is outside the scope of this consent, but the applicant might like to consider this request at the time of giving effect to SUB-2017-62, or at the time of any variation of this consent to be put before Council.

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

- [157] Assessment Matter 6.7.15 of the District Plan directs Council to consider the effects of residential units in the Rural zone in terms of cumulative effects, potential conflict, the covering of soils by hard surfaces, the effects on neighbours' amenity and economic well-being, the effects on the open nature of the environment, and the degree to which the productive potential of the site and future sustainable use is compromised.
- [158] This proposal is for a residential subdivision of Rural-zoned land, and there will be cumulative effects on the rural land as there will be no rural character or productive potential remaining. There will be no open nature of the environment to consider except for the view shaft across the new lots to the existing house.
- [159] The application describes this proposal as an 'in-fill' development, probably because it is the last small pocket of Rural-zoned land in this location, and there is a small rural property (51 Mountfort Street) immediately to the northeast. The site is tightly confined on either side by the State highway and the river, and it is not part of an open rural environment although the site itself is clearly a rural property of some prominence. By developing this land with housing, Outram township will be encountered immediately after the Outram bridge whereas at present there is still a short stretch of open land visible on both sides of the State highway before the built environment is met. There might be a certain desirability in maintaining this setting for the town, but I would not consider this a reason to decline the application to subdivide the subject site.
- [160] Because the subject site is some distance from any other rural property, the proposed housing is not expected to create any conflict or reverse sensitivity issues. If anything, it could well resolve potential conflict as the closest neighbours to the subject site are all residential in nature. If, however, the neighbour is expecting a rural outlook over

Rural-zoned land, then the presence of a residential neighbour instead of a rural activity could result in some conflict.

- [161] A significant portion of the soils will be covered by the proposed roading and future housing of the new lots. These soils are highly unlikely to be uncovered again in the foreseeable future, especially if the land is held in multiple ownerships. In this case, the soils are high class soils and the District Plan directs the Council to consider the extent to which high class soils will be taken out of production. Three of the submitters have also drawn the Council's attention to the covering, and loss of use, of the high class soils at this location should consent be granted.
- [162] While the entire development will not be hard surfaced, the subdivision will result in 2.17ha of high class soils being removed permanently from productive use. While 2.17ha is very small for a farm, there is no planning requirement for a farm to be an economically viable property. Any economic difficulties in farming the present property does not mean the land cannot be used for productive use, as a short drive around Outram township will show. A number of the vacant residential lots in town have been cultivated with rhubarb crops over a period of years to such an extent, despite the size of the land holdings, there must be a commercial element to it.
- [163] The residential use of 94 Holyhead Street has already been considered by the Council at the time of Plan Change 14 which was declined in 2013. One of the reasons that the Committee declined the proposal was because of the loss of high class soils, and because it was in conflict with policy 6.3.10 which seeks to sustain the productive capacity of the soils. The issue is discussed at some length in the decision of Plan Change 14 at pages 11 and 12. The decision states:

'The site contains high class soils and we were struck, on our site visit, with how productive the site appeared to be, with good grass growth even after a period of drought. We accept the evidence presented by Mr Whitney that the loss of high class soils does not, in itself, 'trump' other matters. That is, loss of high class soils should not on its own determine whether or not a proposal should proceed. However, it is a relevant factor that we much consider. The policy guidance is clear that loss of high class soils is to be avoided ...

'... The applicants also argued that the area of land involved is very small, in relation to the total area of high class soils within Dunedin City. However, we do not consider this is justification for loss of this area, as all losses are cumulative. Neither do we accept the applicant's evidence that productive use of this site is not possible, due to its small size...'

'... there is limited justification for the use of this land for residential development, given the availability of land elsewhere, and the lack of proven strong demand [for housing in Outram]. There is therefore insufficient justification for the loss of this land to productive uses.'

- [164] Reading the above, it is therefore unclear how half the land ended up being rezoned Residential 5 during Court mediation, and the consent order, being the official Court documentation, gives us no reasons. Regardless of whether the subject site is 6.35ha or 2.17ha, however, the above arguments remain valid. The subdivision will completely compromise the productive potential of the site, and there is unlikely to be any future sustainable use of the land for Rural zone purposes.
- [165] Regarding the subject of effects on neighbours' amenity and economic well-being, there is unlikely to be any significant adverse effects simply because there are so few adjacent neighbours and no farming properties. The one immediately adjacent neighbour has provided affected party approval to the proposal, and the Council is not to consider the impacts of the proposal on this party.

- [166] In conclusion, while the residential activity itself might not be an adverse effect, the covering of the high class soils and the loss of productive potential of the land will be complete. This is an adverse effect on the high class soils and the rural use of the land.

Landscape (6.7.25)

- [167] The subject site is not in a recognised landscape area, and therefore the Landscape Section of the operative District Plan is not relevant to this subdivision proposal. The Plan generally does not seek to control the position of buildings where permitted outside of landscape areas, nor the appearance or colour of the buildings. The general provisions of the Rural zone in respect of rural character and visual impact do apply, however, and need to be considered. The non-complying status of the application also enables wider consideration of effects which can include the landscape setting (as a factor contributing to amenity).
- [168] The application was submitted with a landscape report prepared by Hugh Forsyth, dated 15 May 2017. He advises that the site is contained by a prominent river embankment, hedges, and trees on neighbouring properties. State Highway 87 passes its northwest boundary at an elevated level, and has strategic views of most of the subject site. The Landscape Architect describes the views from the road as 'appealing', with the Balmoral farmhouse being the main focus. He also assesses the landscape values as 'low-medium' (i.e. the second level on a five level scale), and the site's amenity as being 'medium'. Amenity is a wider assessment than visual appeal, although the visual appearance of the site is often a key factor.
- [169] The Landscape Architect expected the roadside hedge to be removed (which has now happened), opening up the greater site to wider view. The changes to the present landscape will be significant, but the Structure Plan now forms the baseline for this address. 94 Holyhead Street will continue to provide a setting from the entrance to Outram, but the Landscape Architect considers its character will be residential even if Lot 27 SUB-2017-32 remains undeveloped. The Landscape Architect comments: *'For this reasons I do not consider the current site values and its contribution to Outram's setting are sufficient to preserve it regardless.'* The Landscape Architect recommends that consent be given subject to the submission of a landscape and site plan, to be approved by Council, to incorporate the view shaft and height conditions. He also recommends the planting of medium-height trees along the northeast boundary, the imposition of limited reflectivity values for roofs and wall cladding of new housing, and the provision of a design statement for street lighting and street tree planting.
- [170] It is correct that the giving effect of SUB-2017-32 will change the appearance of the area considerably. The extent of that development is already anticipated by the Structure Plan. Any screening that the roadside hedging might have provided has now been negated by the complete removal of the hedge. There remains (for now) a significant hedge along the northeast side of the proposed housing which will screen the new development from public view further along the State highway towards the bridge. The consent conditions for SUB-2017-32 only requires the removal of hedging from the front of Lots 4 and 5. There has already been a major visual change occurring in this location for persons travelling on the main road because of the removal of the hedge, and this will change again as the subdivision of SUB-2017-32 is given effect.
- [171] While the subject site itself will remain farm land, its immediate surroundings to the southeast will change from rural land use to residential development. As the subject site is surrounded on its other sides by the floodbank and the State highway (with its steep hillside to the north), it will, in my opinion, appear as a pocket of open rural land isolated from all other open space. This will be the situation arising from the giving effect of SUB-2017-32.

- [172] The giving effect of *this* consent, if granted, effectively removes the last of the openness of the rural land in this location. It will become a residential area, and the retention of a view shaft across the new lots for the existing house will not mitigate this residential transformation of rural land. While the establishment of housing and gardens need not result in an adverse landscape effect (there is many an attractive residential suburb), it will have adverse effect on the rural landscape simply because this rural openness will be lost.

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

- [173] The Structure Plan for 94 Holyhead Street provides for Lots 1 to 3 SUB-2017-32 to have direct access to Mountfort Street (part of State Highway 87), and for Lots 4 to 8, 24 and 25 SUB-2017-32 to share an access onto an existing driveway within the State highway road reserve which utilises an established intersection. The Structure Plan then requires Lots 8, 24 and 25 to transfer their accesses to the new cul-de-sac at Stage 2. This is an unusual requirement, and one not without its legal and practical complications. Nevertheless, at Stage 1 of SUB-2017-32, seven new lots will utilise the shared access onto the State highway, and at Stage 2, this is to reduce to four lots. SUB-2017-32 was issued with several conditions of consent at NZTA's request. These require the upgrading of the existing intersection to the NZTA 'Diagram E' standard, the removal the existing hedging from the front of Lots 4 and 5, and the vesting of a small triangle of land with the NZTA to protect sight lines from the intersection on an on-going basis.
- [174] The proposal for this consent involves the extension of the new cul-de-sac approved by SUB-2017-32 which connects with Holyhead Street, and the use of the State highway for access for Lots 42, 45 and 46. Lot 49 will vest as legal road with the NZTA and is already occupied by the existing driveway.
- [175] Lots 45 and 46 will be given rights of way over the shared access of SUB-2017-32 (to be utilised by seven lots at Stage 1 and four lots at Stage 2). This consent must follow Stage 2 of SUB-2017-32 (it relies on the cul-de-sac of Stage 2 to obtain access to most of the new lots), and there will not be more than seven uses of the shared access at any time. Lot 42 will have its own access onto the driveway within the road reserve of the State highway, but all three new lots will utilise the existing intersection in order to get onto the main road itself. Again, the giving effect of this consent will follow Stage 2 of SUB-2017-32, and no more than seven lots will use the intersection. This will only change if the applicants, should they obtain consent, seek to have it varied so as to be staged. If so, there could be a maximum of ten new lots using the intersection of the State highway plus the existing property of 51 Mountfort Street.
- [176] The NZTA has lodged a neutral submission for this subdivision proposal. While the NZTA did not fully support Stage 1 of SUB-2017-32 which introduced access onto State Highway 87 for ten residential lots, the options for opposing this earlier subdivision proposal were effectively negated by the requirements of the Structure Plan. This proposed subdivision is not in accordance with the Structure Plan, but does not increase the number of residential lots using State highway for access above that approved for Stage 1 of SUB-2017-32.
- [177] The NZTA remains concerned about poor sight distances along State Highway 87 from the intersection and the cumulative effects of adding three residential lots to its regular usage (after reducing the usage at Stage 2 of SUB-2017-32). The current sight distance towards Outram is 159m as measured by the applicant from the middle of the intersection. However, if taken from the position of a driver stopped waiting to turn right onto the Stage highway, I measure it at approximately 130m, or 150m now the corner of the hedging is removed (as required by SUB-2017-32) or over 200m now that the whole hedge has gone (although this assumes no new fencing or vegetation will limit the sight line in the future). The NZTA safety standard for an estimated traffic speed of 80km/hr is 203m. Therefore, the sight distance visibility at

the proposed intersection is currently adequate but is likely to fall short with the development of the new lots of SUB-2107-32.

- [178] The NZTA has requested that there be a building line restriction imposed over Lots 3, 4, 5 and 6 to provide for a 203m sight line. The NZTA also seeks a restriction in this area so that there is no vegetation over 0.5m in height. Presumably the NZTA expected the hedging to be removed from the front boundaries of these lots, otherwise these restrictions are of no benefit. As these lots are in a different subdivision, already consented, this cannot be a condition of consent unless the applicant (being the consent holder of SUB-2017-32) is prepared to vary SUB-2017-32 so that a consent notice can be attached to the titles of Lots 3 to 6. There is no way of actually enforcing this variation, however, as part of this consent.
- [179] The NZTA also seeks that access for Lots 44, 45 and 46 be redirected to the proposed cul-de-sac instead. This does not resolve the present situation with the SUB-2017-32 lots using the State highway for access, but it will mean that this subdivision does not compound the matter in any way. The NZTA suggests that Lot 50 become a right of way for Lots 42, 45 and 46. This would require some redefining of boundaries and ownership (it is unlikely that the Council will accept private rights of way over a pedestrian walkway), but is not unworkable.
- [180] The proposed subdivision and development has been assessed by Council's Planner/Engineer, Transport. He notes that the proposal includes the extension of the cul-de-sac from SUB-2017-32, to serve Lots 33 to 41, 43, 44, and 53. Transport considers that the proposed road extension to be generally in accordance with design guidance contained in the Dunedin Code of Subdivision and Development 2010.
- [181] A pedestrian access-way (Lot 50) is to be constructed between the proposed new road and Mountfort Street. The applicant states that the proposed accessway will be gravel only. Transport does not support the accessway being unsealed as it is not in accordance with Council requirements and is likely to become a future maintenance concern. It is therefore recommended that the accessway formation be sealed for its full duration.
- [182] The Planner/Engineer notes that it is proposed that Lots 42, 45 and 46 will come off Mountfort Street, for which the NZTA is the road controlling authority. The NZTA has provided a neutral submission with regard to the application, subject to six conditions being imposed should Council approve the subdivision. These relate to the adequacy of sight distance at the State Highway 87 intersection, and include recommendations that Lots 42, 45 and 46 not be accessed from Mountfort Street.
- [183] In general, Transport supports the intent of the conditions promoted by the NZTA. However, Transport does not support the NZTA's proposed condition that the accessway be converted into a right of way to enable vehicle access to Lots 42, 45, and 46 from the proposed cul-de-sac. Accessways are provided for non-motorised traffic only. Instead, alternative access provisions for these lots should be explored in order to enable them to be accessed from the proposed cul-de-sac should direct access to the State highway be unacceptable. The Planner/Engineer has recommended a condition requiring Lots 42, 45 and 46 to be accessed from the cul-de-sac, although it is not clear whether this is instead of, or in addition to, the access to State highway.
- [184] The Planner/Engineer recommends that standard consent conditions for the proposed roads to vest be imposed. Specifically, detailed engineering plans, showing the details of the construction of the proposed roads to vest, and accessway, shall be submitted to and approved by the DCC Transport Group prior to construction. Upon completion of construction of the new roading infrastructure, all works shall be tested to demonstrate that they meet the acceptance requirements of the DCC Code of Subdivision and Development and the works shall be certified as having been constructed in accordance with the approved plans and specifications. As-built plans will need to be provided to the DCC Transport Group.

- [185] Similarly, standard consent conditions relating to the private rights of way should also be imposed. The full length of Right of Way E shall be a minimum 5.0m formed width, adequately drained, and hard surfaced for its duration.
- [186] Transport considers that the adverse effect of traffic generated by the proposed subdivision will be no more than minor, subject to the above conditions on road and access formation. The Transport department is also supportive of the conditions promoted by the NZ Transport Agency except for the one promoting the conversion of Lot 50 into a right of way. The provision of access, parking and manoeuvring on the new lots will be assessed at the time of any building consent or resource consent application for new development.
- [187] Overall, the Planner/Engineer did not identify any concerns for the safe and/or efficient operation of Council's roading infrastructure.

Archaeological Sites (8.13.16)

- [188] There are no known archaeological sites on the subject site. Heritage New Zealand has submitted on the application in respect of possible archaeological sites within the subject site, noting that the land has been occupied as early as the 1860s. Heritage New Zealand is of the view that the proposed development will largely avoid archaeological and heritage sites as any archaeological material is most likely present in the immediate surroundings of Balmoral farmhouse which is not part of this application. However, should any archaeological material be uncovered during earthworks, the applicant will need to obtain an archaeological authority before continuing further. This matter is administered by Heritage New Zealand in accordance with the Heritage New Zealand Pouhere Taonga Act 2014. An accidental discovery protocol should be included as either a condition or advice notice.

Physical Limitations (18.6.1(k))

- [189] Regarding the question as to whether or not the subdivision will produce lots having physical limitations rendering them unsuitable for future use, I note that the proposal lots will all be greater than 1000m². From a purely practical view point, the proposed lots are each of suitable size and shape for a residential dwelling and curtilage. There are no geotechnical issues affecting this land and no known natural hazards which are expected to compromise the building potential of the new lots. The nature and extend of risks from flooding and seismic constraints are such that they can be addressed at the time of building consent. Accordingly, there is no expectation that the proposed subdivision of the subject site will create any lot having physical limitations rendering it unsuitable for future use. Any limitations are introduced by the zoning of the land which does not allow houses to be built on-site as permitted activities.

Amenity Values (6.7.3 & 8.13.5)

- [190] 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"

- [191] The existing environment and character of an area largely determines the amenity values of any site, but amenity values are also expressed by the District Plan through the zoning provisions. In this case, the proposal is for the subdivision of a Rural-zoned parcel of land to be created when 94 Holyhead Street is subdivided in accordance with SUB-2017-32. There is no potential under the rules of the District Plan or the proposed rules of the Proposed Plan to develop this land with even one residential unit, and the consent of SUB-2017-32 did not provide for any residential development of the subject site. Council would not normally issue consent for a subdivision creating a site with no development potential or existing land use besides farming but, in this case, the

subdivision layout was pre-determined by the Structure Plan and the applicant did not request land use consent for a house on Lot 27 SUB-2017-32.

- [192] The physical changes to the immediate area as a result of SUB-2017-32 being given effect will be major, but also in accordance with the expectations of the District Plan. Such changes are not considered to be 'adverse' effects on the amenity of an area, although there will be major change.
- [193] The changes to the area arising from this subdivision will also be major in that open rural farmland will be converted to residential use. This might not be an adverse effect on amenity as there is many an attractive residential area, but it will not be reflective of its Rural zoning in any way. The present character of the land will be lost completely.
- [194] None of the submitters have commented on amenity values specifically for this land, although one is concerned about the piecemeal expansion of Outram and the resulting cumulative effects on amenity. Perhaps then the issue is not the change of Rural-zoned land into residential development creating adverse effects but the extension of a rural township in an inappropriate manner.
- [195] The question of whether this land should be developed as residential land has already been considered by the Hearings Committee at the time of the application for plan change PC-2012-14. The reasons for the Committee declining the application are summarised above in paragraph [3] and do not include any conclusion about effects on amenity. It appears that the changes in amenity were not a crucial factor in the declining of the plan change application.
- [196] It is my view that the subject site contributes to the setting of Outram township when approaching from across Outram bridge. The site is visible from State Highway 87, and the Balmoral farmhouse, within its green surroundings, tends to draw the eye towards the south when driving along the main road into town. The site provides part of the green framework around the township. This will be lost with the proposed subdivision as all the open land on the south side of the main road, up to the bridge, will be developed and while the applicant intends that the farmhouse will remain visible, the context in which it sits will be completely different.

Conflict and Reverse Sensitivity (6.7.26)

- [197] The proposal will result in a total of ten new residential units at the urban/rural edge of Outram. Although the applicant seeks to subdivide Rural-zoned land, there is actually no other Rural-zoned land in the vicinity which is used for standard rural activities such as farming or forestry. The Taieri River and its floodbank separates the subject site from the farming activities of Riverside Road, and the State highway defines the north and northwest edge of the proposed subdivision. The land on the far side of the State highway is very steep and covered in vegetation. There is no active use made of this land, and the Taieri Historical Park at the top of the embankment is not only 120m or more from the subject site (and a good 20m to 30m higher) but is not a typical rural activity in itself.
- [198] The only immediate rural neighbour is 51 Montfort Street which is a residential property of just over 3000m² in area. It has no associated farming activity. Therefore, there is no farming-type activity occurring in close proximity to the proposed subdivision which could have its operations curtailed by the presence of residential properties. I do not consider that the proposed subdivision will give rise to any conflict or reverse sensitivity issues because of its proximity to lawfully established rural activities on Rural-zoned land.

Cumulative Effects (6.7.4)

- [199] The nature of cumulative effects is defined in *Dye v Auckland Regional Council* I [2002] 1 NZLR 337, as the “ ... *gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration*”.
- [200] The District Plan directs the Council to consider the cumulative effects on amenity values, rural character, natural hazards, infrastructure, roading and traffic, and landscape. As discussed above, the proposed development will have an adverse effect on the amenity values of the open rural landscape in this location. It is my opinion that this proposal, as it seeks to subdivide the last of the rural land between Outram and the bridge into residential sites, will have significant cumulative effect on the Rural-zoned landscape and rural character of the land in this location. All appearances of rural openness on this side of Outram between the river and the State highway will be lost.
- [201] The proposed subdivision and development of the subject site is not expected to increase the risk of natural hazards in this location. The subject sites were subject to surface flooding in the recent extreme rainfall event of July 2017, but the applicant has submitted a report by Fluent Solutions specifically to discuss this surface flooding. The report comments that the proposed detention pond and pumping has the potential to benefit the area to the west and the south of Holyhead Street, but did not confirm the effects of stormwater on the wider area. Provided the stormwater detention pond and pump manages any additional stormwater flows adequately, the proposal will not have cumulative effects on the natural flooding hazard of this immediate location. The assessment of effects on a wider area is less definite, with the report noting that any reliance of stormwater disposal to the west under State Highway 87 might be ‘misplaced’. It is possible that the proposed subdivision and development will have an adverse cumulative effect on the flooding risk to the west of the subject site.
- [202] There will be no adverse cumulative effect on servicing. There is sufficient water available within the rural water scheme, and the Water and Waste Services Business Unit are prepared to provide water to all the housing should the Committee grant consent. There is no reticulated wastewater or stormwater servicing, and the new houses will have to be self-sufficient for servicing. There will be no cumulative effects on the Council’s infrastructure.
- [203] The proposed cul-de-sac from Holyhead Street will be constructed as part of SUB-2017-32, as is expected by the Structure Plan. This proposal seeks to extend this cul-de-sac to service an additional twelve houses (at least) on Rural-zoned land. The additional traffic generated by the subdivision and its effects on Holyhead Street are not anticipated by the District Plan. It is my opinion that the additional traffic will have a cumulative effect on the operation of Holyhead Street which is minor. It is likely to be noticeable, but there will already be a quite significant effect from the subdivision of SUB-2017-32 and the traffic effects cannot be credited in entirety to this particular proposal. Furthermore, it will not necessarily be any different to the effects of residential activity elsewhere within Outram on the rest of the roading infrastructure.
- [204] The proposed residential development will have significant cumulative effects on the high class soils. Any productive worth of the soils which have been used as market gardens and pasture for decades will be completely lost to productive potential.

Sustainability (6.7.1)

- [205] 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.

- [206] It is my opinion that the proposed subdivision will have effects on the amenity values and character of this area which are more than minor, given its position at the urban/rural edge of Outram and the present open vista over pastoral land which greets the driver entering Outram from across the bridge. This will change in any case with the introduction of 25 houses as part of SUB-2017-32, but this subdivision will remove any rural character left in this location.
- [207] The proposed development will be fully self-serviced except water supply is available for connection. The development will be sustainable use of the Council's service infrastructure, although I note that one submitter has opposed the application on the basis that there is no reticulated wastewater system for the houses to connect into. The Water and Waste Services Business Unit has not identified this as an issue for Outram.
- [208] The proposed subdivision will construct a new cul-de-sac to service most of the new lots. This will introduce additional traffic onto Holyhead Street. While there will be a greater amount of traffic movements, Holyhead Street is still expected to function effectively and safely. The proposed subdivision should be sustainable use of the Council's transportation network. The additional use of the State highway is a NZTA concern. The authority has noted that the proposal has the potential to have adverse effects on sustainability of the transportation network, but made a neutral submission.
- [209] The proposed housing will cover high class soils. This is to be expected on land zoned Residential 5 but not on Rural-zoned land where there is less than 15.0ha within the site (i.e. residential development is not anticipated at all). The proposed subdivision will remove all the high class soils on this property from potential productive use. This was one of the reasons that the private plan change was declined in 2013. I do not consider that the development is sustainable use of the City's high class soils and productive worth of the land.
- [210] Overall, I am off the opinion that the proposed subdivision and development will be not be sustainable use of Dunedin's physical and natural resources, particularly in respect of high class soils, productive worth, and rural character and amenity. It will be sustainable use of Council's services and roading infrastructure.

Summary

- [211] The proposed subdivision and residential development of the subject site will have significant adverse effects in terms of its Rural zoning and rural character, including the preservation and use of high class soils for rural production. Any rural values that the land currently has will be entirely lost with the proposed subdivision. While the effects on landscape might not be negative (a residential area can be attractive), the development of the land and its associated visual effects will not reflect the current Rural zoning.
- [212] The residential development of the land is not expected to have any adverse effects on Council's infrastructure or roading. The proposal should not have any cumulative effects on natural hazards, although it is not certain that there will not be increased risk of surface flooding on the western side of the subject site and within that catchment. The subdivision layout also seeks to preserve the view shaft towards the Balmoral farmhouse, and will respect the archaeology and heritage values of the neighbouring property.

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

- [213] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the Proposed Second Generation District Plan has been notified. At the time of writing this report, decisions

on the Proposed Plan hearings have yet to be released. The objectives and policies of both Plans have been taken into account. The following section of the report assesses the proposal against the relevant objectives and policies of both plans.

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The residential development of the land is not considered to be an adverse effect on the amenity values of Outram as a whole, but the proposal will not maintain or enhance the rural character and amenity of this particular location and zoning. The proposal is considered to be inconsistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The new housing will be self-serviced except for water supply, and will utilise existing roading infrastructure. There is capacity within the reticulated rural water scheme to serve all the new dwellings. Accordingly, I consider that the proposed subdivision is consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	The natural and physical resource of high class soils and productive land is not protected by this development. The proposed development of this land with residential dwellings will render the site completely non-productive. The proposal is contrary to this objective and policy.
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The residential use of rural land is not considered to be incompatible with rural land use at an appropriate density, and houses are an expected component of the Rural zone. In this case, the development of the rural land with houses will remove all rural character and land use within the subject site and is separated from surrounding rural land by the highway and river. Therefore, there cannot be any indiscriminate mixing of incompatible land uses. As the rural land use is being supplanted, the proposal is considered to be consistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

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

Rural/ Rural Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The proposal will result in the high class soils and farm land being fully removed from rural productive use. The land will become entirely a residential development. The proposal is considered to be contrary to this objective and these policies.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	
Policy 6.3.2	Sustain the productive capacity of the Rural zone by controlling the adverse effects of activities	
Policy 6.3.3	To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.	The proposal will subdivide a small Rural-zoned property into residential lots, thereby completely fragmenting the rural productive land into non-productive land use. There will be an avoidance of conflict between land uses, if for no other reason than there will be no rural land use left. The proposal does not limit the density of residential development in the Rural zone. The proposal is considered to be contrary with this policy.
Policy 6.3.10	Protect areas that contain 'high class soils', as shown on the District Plan Maps 75, 76, and 77, in a way which sustains the productive capacity of the land.	The proposed development does not sustain the productive capacity of the land. The proposal is considered to be contrary to this policy.
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The amenity values of the rural area will not be maintained or enhanced as they will be completely lost. The built environment will take predominance over the natural features; there will be a high ratio of built environment over open space; there will no longer be any significant areas of vegetation, pasture or crops; there will be no farmed animals; the population density will be the same as Outram township; the roads will be sealed; and there will be water supply and a shared stormwater management scheme. The proposal is considered to be contrary to this objective and policy.
Policy 6.3.5	Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to: a) a predominance of natural features over human made features; b) high ratio of open space relative to the built environment; c) significant areas of vegetation in pasture, crops, forestry and indigenous vegetation; d) presence of large numbers of farmed animals; e) ... f) Low population densities relative to urban areas; g) Generally unsealed roads; h) Absence of urban infrastructure.	
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	The proposed development will have only one immediate neighbour (besides the lots of SUB-2017-32). The buildings of proposed Lots 37 and 38 will be constructed close to the boundary of 51 Mountfort Street, and there will be no avoiding, remedying or mitigation of the effects. The proposal is considered to be inconsistent with this policy.
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	The proposed subdivision and development will sustainably manage the roading network and services infrastructure. The traffic generated by the additional houses is within the capacity of

Policy 6.3.8	Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	the existing roading. There will be no demand on urban infrastructure services except water. Accordingly, the proposal is considered to be consistent with this objective and policy.
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposals are considered to be consistent with this objective. The proposed residential activity is not expected to conflict with any of the adjoining rural activities simply because there are none left in the immediate area.
Policy 6.3.9	Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and on-site effluent disposal.	The proposed houses can all be self-serviced although there is water supply available for connection. The proposal is considered to be consistent with this policy.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activity is an expected component in the Rural Zone, although not on such small sites. The residential activity will completely remove all rural character from this land, although residential activity is not necessarily an adverse effect in itself. The proposal is considered to be inconsistent with this policy.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	The proposed development will adversely affect the rural amenity of this site, but not the wider Rural-zone because of the site's isolation from other Rural land. This separation from other rural land means that there will be minimal conflict with the productive activities of the zone, although the subject site will have no rural land use remaining. The proposal is considered to be inconsistent to this policy.
Policy 6.3.14	Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to: (a) amenity values. (b) rural character (c) natural hazards, (d) the provision of infrastructure, roading, traffic and safety, or (e)	It is my view that the subdivision and development the land will have cumulative effect in terms of the loss of high class soils for productive use, and the rural character of the land which are more than minor. It will not have adverse cumulative effect in terms of infrastructure. Overall, the proposal is considered to be contrary with this policy.

Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is for a residential development, and accordingly, there is unlikely to be any adverse effects on the residential neighbours except that the land will no longer reflect the Rural zoning which the residential neighbours could reasonably expect to be preserved. The closest residential neighbours are those of SUB-2017-32. The proposal is considered to be inconsistent with this objective and policy.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.7	Ensure that all development in unserviced residential areas makes adequate provision for the disposal of effluent on-site without having any adverse effects on the environment.	Outram has no reticulated wastewater services and all housing relies on septic tank. Water and Waste Services Business Unit has not identified any concerns for the servicing of these lots except possibly in regard to the effects of surface flooding on the ability of the effluent systems to work. The proposal is considered to be inconsistent in part with this policy.
Objective 8.2.2	Ensure that activities do not adversely affect the special amenity values of rural townships and settlements.	The proposed development of the Rural-zoned land with residential dwellings is not considered to maintain the special amenity values of

Policy 8.3.6	Ensure that development in rural townships and settlements does not exceed the limitations of the urban service infrastructure.	Outram because it will encroach into Rural-zoned land and will cover the last of the open land between Outram and the bridge. The development will not exceed the limitations of the urban service infrastructure. The proposal is considered to be inconsistent with this objective but consistent with this policy.
Policy 8.3.9	Recognise and retain views of rural surroundings from the urban areas, rural townships and settlements.	The proposed development will remove the rural setting of Outram when viewed from State Highway 87 to the north of the township. Any residential properties of Outram overlooking the subject site will no longer have rural views. The proposal is considered to be contrary with this policy.
Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	The proposal is considered to be consistent with this objective and policy. The proposal involves residential development of Rural land, but there are no issues with the service infrastructure for this development. The proposal is not considered to have adverse effects on the management of Council's transportation infrastructure.
Policy 8.3.4	Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	The subject site is recognised as being subject to a flooding risk and the recent rainfall event resulted in surface flooding. Setting adequate floor levels for the new development can mitigate the risk of surface flooding, but it is not clear from the reports whether other residential properties in Outram will be adversely affected by changes in stormwater flows. The proposal is expected to be inconsistent with this objective and policy.
Policy 17.3.3	Control development in areas prone to the effects of flooding.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	The earthworks for this development are not expected to create or exacerbate land instability. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The applicant describes the subdivision as 'in-fill' development. It takes place adjacent to residential areas, and will subdivide a small pocket of Rural-zoned land between the floodbank and the State highway. In this respect, the proposal is a coordinated subdivision proposal. It will not allow further subdivision, however, and will be out of character for the zone. Overall, the proposal is inconsistent to this objective and policy.
Policy 18.3.1	Avoid subdivisions that inhibit further subdivision activity and development.	
Policy	Allow the creation of special allotments	The proposal will create roading and walkways

18.3.3	that do not comply with the subdivision standards for special purposes.	as appropriate. The proposal is considered to be consistent with this policy.
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	There are no indications that this land is unsuitable for subdivision except possibly for the surface flooding risk. This policy is concerned with process.
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The Water and Waste Services Business Unit has not identified any issues with the self-servicing the new lots, although the Development Engineer has some concerns about the lack of definite calculations for the stormwater management plan. On the basis of information available, the proposal is considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	No physical limitations preventing subdivision or development have been identified for this land. The proposal is expected to be consistent with this objective.
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The land is quality productive land but the subject site is small and unlikely to be an economic farm unit in its own right. Even so, as open land it has potential productive use which the subdivision proposal does not recognise. The high class soils and farming potential of the land is not recognised. The proposal is considered to be contrary to this objective.
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	The subdivision consent application is being heard with the associated land use application for residential activity, earthworks, and technical breaches.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The proposed subdivision will not protect the natural and physical resource of the high class soils and the productive potential of the land. The proposal is considered to be contrary to this objective.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The proposed development will have little impact on the infrastructure as the houses will be self-serviced for wastewater and stormwater. There is sufficient capacity in the rural water scheme to supply all the houses. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	All residential development in Outram uses septic tanks for effluent disposal, much of it occurring on sites of 1000m ² . The Water and Waste Services Business Unit has not identified any concerns for servicing except that there is insufficient detail to determine with confidence that stormwater runoff will not adversely affect neighbouring properties. The proposal is considered to be inconsistent in part with this policy.

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The proposed subdivision will create the necessary roading infrastructure internal to the development needed to provide each lot with adequate legal and physical access. Some lots will connect with the State highway. The NZTA has made a neutral submission on the proposal, but seeks a number of conditions to manage with works within the State highway road reserve. The Council's Transport department has not identified any concerns about the use of Holyhead Street for access, and there are no submissions on this subject. The proposed development is not considered to adversely impact on the roading network, even though the traffic generation is above that anticipated by the zoning. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Proposed Plan

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

Strategic Directions

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 2.2.1	The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low.	The proposed subdivision is considered to manage the risk to the Outram community and the subject sites from natural hazards except potentially surface flooding. The floodbank protects the subject site and Outram from major flooding, and the risk to residential development of this land is accordingly mitigated. There are already issues with surface flooding in the area pre-development as has been seen in July 2017. It is unclear how effective the proposed stormwater management of the development will be in maintaining or improving the situation of surface flooding for the wider area. The risk from surface flooding is 'moderate'. The proposal is considered to be inconsistent in part with this objective and policy.
Policy 2.2.1.1	Manage land use, development and subdivision based on: 1. the sensitivity of activities, by identifying them as: a sensitive activity, a potentially sensitive activity, or a least sensitive activity; 2. the risk from natural hazards to people, communities and property, considering both the likelihood and consequences of natural hazards, as shown in Table 11.1 in Section 11.	
Objective 2.2.2	Dunedin is well equipped to manage and adapt to any changes that may result from volatile energy markets or diminishing energy sources by having: 1. increased local electricity generation; 2. reduced reliance on private motor cars for transportation; and 3. increased capacity for local food production.	The proposal does not increase capacity for local food production as it takes land with high class soils in close proximity to Outram and uses it for residential activity. The use of Rural-zoned land for residential activity will render the site unsuitable for cultivation. The proposed subdivision and development does not protect important high class soils and productive land from residential-oriented development. The development is not in accordance with the Rural zoning. The proposed subdivision is considered to be contrary with this objective and policy.
Policy 2.2.2.1	Identify areas important for food production and protect them from activities or subdivision (such as conversion to residential-oriented	

	development) that may diminish food production capacity through: 1. use of zoning and rules that limit subdivision and residential activity, based on the nature and scale of productive rural activities in different parts of the rural environment; 2. consideration of rural productive values in identifying appropriate areas for urban expansion; and 3. identification of areas where high class soils are present (high class soils mapped area); and 4. use rules that require these soils to be retained on site.	
Objective 2.3.1	Land that is important for economic and social prosperity, including industrial areas, major facilities, key transportation routes and productive rural land, is protected from less productive competing uses or incompatible uses.	The proposal does not protect the rural productive land of the subject site from less productive use. The proposal is considered to be contrary with this objective.
Policy 2.3.1.2	Maintain or enhance the productivity of farming and other activities that support the rural economy through: 1. rules that enable productive rural activities; 2. rules that provide for rural industry and other activities that support the rural economy; 3. zoning and rules that limit subdivision and residential activity based on the nature and scale of productive rural activities in different parts of the rural environment; 4. rules that restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika; 5. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential-oriented development; 6. rules that prevent the loss of high class soils; and 7. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location and support rural activity.	This is a policy concerned with process and the framework for the planning rules. In terms of what the rules are meant to achieve, it is noted that the proposed subdivision does not enable productive rural activity, does not provide for rural industry, does not create sites which meet the nature and scale of productive rural activities, does not support productive rural activities, and leads to land fragmentation.

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 extension of the cul-de-sac into Rural-zoned land is not consistent with the amenity and character of the zone. The new lots should all have adequate legal and physical access, subject to conditions but the access requirements will be for an urban environment and not a rural location. Overall, the proposal is considered to be inconsistent with this objective.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	The proposal will require new accesses onto the State highway. The accesses will need to be formed to NZTA standard. The proposal is

		considered to be consistent with this policy.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development is not expected to change the safety and efficiency of the local roading network, subject to conditions on formation. The NZTA has not opposed the proposal, including the intent to have lots directly accessed from the State highway road reserve. 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.	
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport network.	

Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The Water and Waste Services Business Unit has noted there is available capacity in the rural water scheme to serve all the new houses even though they are not within the water supply boundary. Although there is no reticulated wastewater or stormwater systems available for connection, this is the case for all of Outram. The self-servicing of the house sites is consistent with the approach taken for Outram. The proposal is considered to be consistent with this objective and policy.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	This proposal is the second subdivision of 94 Holyhead Street, where the first subdivision (SUB-2017-32) has not yet been given effect to. The first subdivision is likely to create the largest change for the neighbourhood, but is to be undertaken in accordance with the Structure Plan and the effects are therefore anticipated. This subdivision will subdivide the balance land of SUB-2017-32. The proposal is considered to maintain people's health and safety. There will be minimal direct effects on neighbours, except possibly for those at 51 Mountfort Street, resulting from the proposed subdivision and new housing. The proposal is considered to be consistent with this objective and policies.
Policy 9.2.2.1	Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not possible, ensure any adverse effects would be insignificant.	
Policy 9.2.2.7	Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public infrastructure where	

	the land use, development or the size and shape of resultant sites from a subdivision, ensure wastewater and stormwater can be disposed of in such a way that avoids adverse effects on the health of people on the site or on surrounding sites or, if avoidance is not possible, ensure any adverse effects would be insignificant.	the Water and Waste Services Business Unit has not identified any concerns about the wastewater self-servicing of the house sites. Stormwater is to be managed via a stormwater detention pond. The application does not contain enough detail for Water and Waste Services Business Unit to be entirely confident that the proposal will not have adverse effects on the surrounding area. The proposal is considered to be inconsistent in part with this policy.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	There are fire-hydrants available for use for fire-fighting on Holyhead Street and Mountfort Street. A new fire-hydrant will need to be installed in order to comply with the requirements. The proposal is considered to be consistent with this policy.

Natural Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 11.2.1	The risk from natural hazards, including climate change, is minimised, in the short to long term.	The risk to the new lots and properties in the wider area from surface flooding has not been fully quantified. The proposal is considered to be inconsistent with this objective.
Policy 11.2.1.3	In the hazard 1 and 2 overlay zones, only allow new buildings, and additions and alterations to buildings, where the scale, location and design of the building or other factors mean risk is avoided, or is no more than low.	Unless more definite calculations and details are provided regarding the stormwater management plan, it cannot be concluded that the risk to housing is 'low'. The proposal is inconsistent with this policy.
Policy 11.2.1.5	In the hazard 2 overlay zones, only allow the establishment of sensitive activities where the scale, location and design of the activity or other factors means risk is avoided, or is no more than low.	
Policy 11.2.1.12	In all hazard overlay zones, or in any other area that the DCC has good cause to suspect may be at risk from a natural hazard (including but not limited to a geologically sensitive mapped area (GSA)), only allow earthworks - large scale or subdivision activities where the risk from natural hazards, including on any future land use or development, will be avoided, or no more than low.	The earthworks are not expected to obstruct or impede flood waters. The existing flood bank reduces the risk of flooding from the river. Should the floodbank fail, the change in ground levels on the subdivision site will have insignificant effect.
Policy 11.2.1.15	Only allow earthworks in a swale mapped area and earthworks - large scale in hazard (flood) overlay zones, where they will not: 1. obstruct or impede flood water, unless part of an approved natural hazard mitigation activity; and 2. create, exacerbate, or transfer risk from natural hazards.	The earthworks should not exacerbate any surface flooding risk, and might reduce it if the change in ground levels and the road formation directs water to the stormwater detention pond of SUB-2017-32, provided the pond and pump have capacity. Off-site effects and influences have not been fully analysed. On the basis of known information, the proposal is considered to be consistent with these policies.

Residential zones

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 15.2.1	Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities,	The proposal is to establish residential activity on a Rural-zoned site, at a density compliant with the District Plan expectations for the Township and Settlement zone. As a residential development, the proposal is considered to be

	major facilities, and commercial activities that support the day-to-day needs of residents.	consistent with this objective and policy. As a rural development, this objective and policy does not apply.
Policy 15.2.1.1	Provide for a range of residential and community activities, where the effects of these activities can be managed in line with objectives 15.2.2, 15.2.3, 15.2.4, and 15.2.5 and their policies.	
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents	The residential development of the land will be similar to the residential development of Outram in general. The lots will all meet minimum lot size consistent with the Township and Settlement zoning, which will allow a house to be built with a sunny orientation on each. The proposal is considered to be consistent with this objective and policy.
Policy 15.2.2.1	Require residential development to achieve a high quality of on-site amenity by: a) providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, and recreation; b) having adequate separation distances between residential buildings; c) retaining adequate open space uncluttered by buildings; and d) having adequate space available for service areas.	
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	The new lots will have few direct residential neighbours except for those of SUB-2017-32. 51 Mountfort Street is a residential property on Rural zoning. While the original owner of this property has provided affected party approval it is not known how the new owner feels about the project. There are no development proposals for the new lots as yet, but all are of adequate size and shape to accommodate a residential dwelling albeit that the Rural-zone yard spacing must be significantly breached in all cases. The proposal is considered to be inconsistent with this objective and policy.
Policy 15.2.3.1	Require buildings and structures to be of a height and setback from boundaries that ensures there are no more than minor effects on the sunlight access of current, and future residential buildings and their outdoor living spaces.	
Objective 15.2.4	Subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	The proposed subdivision is consistent with the residential development of the nearby Township and Settlement zoning, but not the Rural-Taieri Plains zoning that actually applies to the subject site. The subdivision is unlikely to require significant earthworks, and is likely to provide quality housing. Given the zoning, however, the proposal is considered to be inconsistent with this objective and policies.
Policy 15.2.4.2	Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	
Policy 15.2.4.6	Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a) maintain the amenity of the streetscape b) reflect the current or future intended character of the neighbourhood; c) provide for development to occur without unreasonable earthworks or engineering requirements; and d) provide for quality housing.	

Rural Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential	The subdivision does not seek to reserve the Rural zone for productive rural activities. The proposed housing is not associated with the rural productive worth the land and high class soils. Accordingly, the proposal is considered to be contrary with this objective.

	activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	
Policy 16.2.1.5	Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	The proposal will create 15 significantly undersized Rural - Taieri Plains sites. The new lots will not reflect the rural zoning in any way and does not support farming activity on the subject land. The proposal is considered to be contrary to this policy.
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	There are no surplus dwellings on the subject site. The proposal is contrary to this policy.
Objective 16.2.2	The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: 1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised; 2. the residential character and amenity of adjoining residential zones is maintained; and 3. a reasonable level of amenity for residential activities in the rural zones.	The proposed development is not expected to create conflict with rural activities mainly because there is no rural activity occurring in close proximity to the proposed lots. The subdivision will reflect the nearby residential zoning, and the residential property on Rural zoned land at 51 Mountfort Street, and will therefore not create conflict because of differing activities. The proposal is considered to be consistent with this objective.
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The yards are to be reduced to reflect those of the Township and Settlement zoning. This could have significant impact for the property of 51 Mountfort Street, but is unlikely to adversely affect any other neighbouring site. On the basis of known information, the proposal is considered to be consistent with this policy.
Objective 16.2.3	The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; 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 proposed subdivision will intensify the density of development of this part of the Rural - Taieri zone to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to that consistent with a residential suburb. The residential activity of the new lots will not be associated with rural activity, and its position will affect the ability to farm the land. The proposal is considered to be contrary to this objective.
Policy 16.2.3.1	Require buildings, structures and network utilities to be set back from boundaries and identified ridgelines, and of a height that maintains the rural character values and visual amenity of the rural zones.	The proposal will not maintain the rural character and amenity as the subdivision will change the character of the land from open farmland to a residential suburb. It will be particularly visible from the State highway. The proposal is considered to be contrary with this objective and policy.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	

Policy 16.2.3.8	Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.	The subdivision is not considered to maintain or enhance the rural character and visual amenity of the zone. The proposal is contrary to this policy.
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[214] 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. While I have assessed the proposal under the Residential objectives and policies of both Plans, given that the proposal is for a residential subdivision in nature, the Rural objectives and policies have been given greater weighting as this is the applicable zoning under both Plans.

[215] It is my view that the proposal is generally consistent with the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, conflict and reverse sensitivity, earthworks and transportation. However, it is inconsistent with those relating to the development of hazard areas, and effects on neighbouring properties. Further, it is considered to be contrary to the objectives and policies that address rural productive worth, sustainability, land fragmentation, the protection of high class soils, rural character and amenity, density, and the protection of natural and physical resources. It is considered to be contrary to the direction given for subdivision of rural land and the preservation of rural land use in the Proposed Plan objectives and policies.

Assessment of Regional Policy Statement and Plans

[216] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. 26 notices of appeal were then received and the parties are now in the mediation period. Any issues not resolved through mediation will become the subject of an Environment Court hearing.

[217] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 11: Natural Hazards. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:

- Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
- Policy 3.1.7: Soil values.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way.
- Policy 4.3.1: Managing infrastructure activities.
- Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity.
- Policy 5.2.1: Recognising historic heritage.
- Policy 5.2.2 Identifying historic heritage.
- Policy 5.2.3: Managing historic heritage.

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

- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.2: Economic wellbeing.
- Policy 1.1.3 Social and cultural wellbeing and health and safety.

- Objective 3.2: Otago's significant and highly values natural resources are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.
- Objective 3.2: Otago's significant and highly valued natural resources are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.
- Objective 5.3: Sufficient land is managed and protected for economic production;
- Policy 5.3.1: Rural activities.

7. DECISION MAKING FRAMEWORK

Part II Matters

- [219] Given there is no ambiguity, incompleteness or illegality in the operative Dunedin City District Plan, it may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below, and in my opinion, there is inconsistency or a degree of conflict with Part II stemming from the proposed development of the Rural-zoned land for residential activity of an urban density.
- [220] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:
- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
 - 5(2)(b) "Safeguarding the life-supporting capacity of air, water soil and ecosystems;
 - 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",
 - 7(b) "The efficient use and development of natural and physical resources";
 - 7(c) "The maintenance and enhancement of amenity values";
 - 7(f) "Maintenance and enhancement of the quality of the environment"; and
 - 7(g) "Any finite characteristics of natural and physical resources".
- [221] With regard to Section 5(2)(a), it is considered that the proposed subdivision and residential development will not sustain the potential of natural and physical land resource because the subject site is rural land with high class soils, and there is no expectation that this land will be developed with housing.
- [222] With regard to Section 5(2)(b), it is considered that the proposed subdivision will not safeguard the life-supporting capacity of the high class soils. The soils will be completely removed from productive use.
- [223] With regard to Section 5(2)(c), it is considered that the proposed subdivision will have adverse effects on the landscape and the rural environment. The subject site is visible from the State highway, and places Outram within a rural context. The proposed subdivision will change this setting and vista considerably, although a residential development is not automatically an adverse effect on the landscape.
- [224] With regard to Section 7(b), it is considered that the proposed subdivision will not be the efficient use and development of the high class soils and rural productive land. Neither the District Plan nor the Proposed Plan expect high class soils to be covered by housing where located within a rural zone.

- [225] With regard to Section 7(c), it is considered that the proposed subdivision will not maintain the amenity values of the Rural zone. As a residential subdivision next to residentially-zoned land, the proposed development is unlikely to adversely affect the amenity of the adjoining land, but it will not reflect any rural character.
- [226] With regard to Section 7(f), it is considered that the proposed subdivision will change the quality of the environment significantly in a way which does not reflect the zoning, and will adversely affect the rural character.
- [227] With regard to Section 7(g), it is considered that the proposal will maintain the finite resource of the high class soils. The farming potential of the land will be completely lost, and the high class soils not only removed from productive use but potential productive use.

Section 104

- [228] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment would be more than minor in terms of the Rural zoning and rural character, including the preservation and use of high class soils for rural production. The effects on surface flooding have not been determined conclusively to be less than minor.
- [229] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the proposal is generally consistent with many objectives and policies of the Plans; however, subdivision is considered to be contrary with many of the relevant objectives and policies of both the District Plan and Proposed Plan in respect of sustainability, rural productive worth, high class soils rural character and amenity, and the protection of natural and physical resources.
- [230] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [214] and [215] of this report it was concluded that the application is consistent with many of the relevant objectives and policies of the Regional Policy Statement for Otago regarding infrastructure and historic heritage and, but inconsistent with those to do with the protection and management of high class soils, natural and physical resources, and economic production.
- [231] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

- [232] Another matter relevant to the Committee is the consistent administration and interpretation of the District Plan. Further, the application is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.
- [233] 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."

- [234] 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."

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

- [236] 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."

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

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

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

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

- [239] The applicant considers that:

'... the context of the development site, being a small site that is tightly confined between existing residential activities on the north-east and south-west and between the infrastructure activities of the State Highway to the

north-west and the Taieri River to the south-east, confirms the circumstances necessary to pass the true exception test. The fact that the site has been subject to a rezoning process several years ago that resulted in a small residual portion of land existing within the Rural zone, without any substantive measure of merit for this land to be occupied by an independent rural activity, is further support for the recognition of exceptional circumstances.'

- [240] I agree that the situation of the subject site is unusual. It is isolated from any other rural productive land by the topography and river, and the granting of consent would not result in a blurring of the zones to any extent. The river and embankment on the far side of the State highway will continue to provide definite barriers between the subject land and the rest of the Rural zone. The granting of consent is therefore unlikely to set an undesirable precedent as there are few other sites that would share these characteristics.
- [241] The matter of the previous application to rezone the subject site is less clear. The private plan change was actually declined by the Council, and the fact that an application was made in the first place should not be considered a 'true exception'. Furthermore, having been declined, the plan change application progressed through to Environment Court mediation. An agreement between the Council and the property owner was then reached to rezone approximately half of the property, leaving the portion subject of this application zoned Rural. I therefore struggle with the argument that this Rural-zoned land should also be developed as if zoned Residential 5 because there is so little of it left. There would be a good deal more Rural-zoned land if the applicant had not appealed the Council's original decision and reached a mediated agreement.
- [242] Lastly, the District Plan does not require Rural-zoned land to be utilised as an economically viable business, and the fact that this land is no longer intensively farmed because of economics is not a true exception. There are many small rural blocks, and more than a few large ones, where the property does not operate as a viable and independent economic unit. Therefore, while the setting of the subject site could be considered a true exception, I do not consider that the true exception argument is as strong as the applicant suggests.

Non complying status (s104D)

- [243] 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.
- [244] It is my opinion that the subdivision and development of this subject site will have more than minor adverse effects on the rural amenity and character, and the natural and physical resource of the high class soils. It will have more than minor cumulative effects for the same reasons. In respect of the objectives and policies of both Plans, the proposal is considered to be contrary to the majority of the objectives and policies of the Rural, Sustainability, and Subdivision sections.
- [245] Overall, I consider that the proposed subdivision and development of the subject site will have effects which are more than minor, and the proposal will be contrary to many of the key objectives and policies. Therefore, in my opinion, the proposal does not clearly meet either branch of the gateway test, and the Committee is not in a position to consider the granting of consent.

8. RECOMMENDATION

Subdivision SUB-2017-49

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan and Proposed Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **declines** consent to the **non-complying** activity being the subdivision of the land subject to the NES legally described as Lots 10 and 27 SUB-2017-32 (currently part of Lot 2 DP 20759; CFR OT12B/346) at 94 Holyhead Street, Outram, into a total of 15 residential lots.

Land Use LUC-2017-222

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of residential activity on Lots 33 to 46 and 53 SUB-2017-49, and the disturbance of soils and the change of use of a HAIL site at 94 Holyhead Street, Outram.

I have recommended conditions for consent as Appendix 1 of this report to assist the Committee in the event that the consent is granted.

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of the subject site will be more than minor for the following reasons:
 - a) The proposed lots are all significantly undersized for the Rural zone, being more consistent with the Residential 5 zone of Outram. This development will have significant effect on the rural landscape and character, effectively eradicating the rural amenity to be found in this location. This property forms part of the gateway to Outram from across the Taieri River, and the subject site is very visible from State highway 87.
 - b) The new dwellings will be sited on high class soils. The residential development of this land will remove high class soils from productive use, probably permanently. Although the high class soils might be currently underutilised for economic reasons, the productive potential of the soils remains while the land is undeveloped by buildings and structures and associated hard surfacing. The high class soils are a natural and physical resource of finite quantity.
 - c) The proposal will have cumulative effect on the rural amenity and setting as the granting of consent will remove all openness from this location. The setting will become purely residential in nature.
 - d) The applicant has not demonstrated conclusively that the proposal will not exacerbate or create surface flooding on this land or other land within the catchment. There is insufficient detail provided in the stormwater management report submitted with the application to determine whether the stormwater detention pond of SUB-2017-32 and the existing drainage arrangements along and under the State highway will keep the post-development stormwater levels at a comparable or better rate than pre-development levels.
 - e) While the original owner of 51 Mountfort Street has provided affected party approval, the new owner has not. The proposal will result in new housing built up to 2.0m from the boundary of 51 Mountfort Street, whereas the relevant

yard spaces of the District Plan specify 40.0m yards for the Rural zone. The difference is significant, and has the potential to have more than minor effects on a party who has not provided affected party approval and has missed the submission period.

2. There is a limited true exception argument for this proposal, although the nature and position of the subject site within the Rural zone has characteristics which are unusual and unlikely to be replicated elsewhere, the proposal is for the subdivision of Rural-zoned land at the edge of a township. This is not a unique situation, and the granting of consent could result in setting an undesirable precedent where other property owners at the edge of an urban settlement could conceivably expect to be able to subdivide their small rural block in a similar manner.
3. The proposal is considered to have adverse effects on rural productivity and high class soils which are more than minor, and it will be contrary to the objectives and policies of both Plans in respect of the same matters. The proposal does not meet either test of section 104D, and the Committee is not in a position to consider the granting of consent.

Report prepared by:

Report checked by:



Lianne Darby
Planner



Campbell Thomson
Senior Planner

18.10.17

Date

18.10.17

Date

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

DRAFT RECOMMENDED CONDITIONS: Subject to change.

SUB-2017-49

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Paterson Pitts Group entitled, 'Lots 32 - 52 Being a Proposed Subdivision of Lots 10 and 27 Sub-2017-32,' dated 29 May 2017, and the accompanying information submitted as part of SUB-2017-49 received at Council on 31 May 2017, except where modified by the following:*
2. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.*
 - b) *That Lots 47 and 48 shall vest as road with the Council.*
 - c) *That Lot 50 shall vest as accessway with the Council.*
 - d) *That Lot 49 shall vest as road with the NZ Transport Agency.*
 - e) *That the layout shall be revised so that Lots 42, 45 and 46 can be accessed from the cul-de-sac (Lot 48), creating right of way easements as necessary.*
 - f) *That Right of Way E over Lot 30 SUB-2017-32 shall be duly created or reserved and shall be shown on the survey plan in a Memorandum of Easements. The right of way shall be the full width of the access lot.*
 - g) *That Right of Way D shall be duly created or reserved over Lot 7 in favour of Lots 36 and 38, and shall be shown on the survey plan in a Memorandum of Easements. The right of way shall have a minimum legal width of 3.5m.*
 - h) *That easements in gross in favour of the Dunedin City Council shall be created as required over any foul sewer, stormwater sewer or water main which is to be vested with the Council. The easements in gross shall be made in accordance with Sections 4.3.9, 5.3.4, or 6.3.10.3, as appropriate, of the Dunedin Code of Subdivision and Development 2010. The easement documentation shall be prepared in consultation with the Asset Manager, Water and Waste Services Business Unit, to ensure an appropriate maintenance agreement is obtained over the access lots and services.*
 - i) *That the following amalgamation conditions shall be endorsed on the survey plan:*

'That Lot 51 hereon and Lot 11 DP ... (CFR ...) shall be held in the same computer freehold register (see CSN Request 1453844).'

'That Lot 52 hereon and Lot 9 DP ... (CFR ...) shall be held in the same computer freehold register (see CSN Request 1453844).'

3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

- a) *The subdividing owner of the land shall provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz advising who their representative shall be for the design and execution of the engineering works required in association with this subdivision and shall confirm that this representative will be responsible for all aspects of the works covered under NZS4404:2004 "Code of Practice for Urban Land Subdivision" in relation to this development.*

Engineering Design:

- b) *That detailed engineering plans, long-sections, and associated calculations for the water, wastewater and stormwater infrastructure shall be submitted to the Asset Planning Engineer, Water and Waste Services Business Unit, for approval prior to any works commencing on the site. The engineering plans and associated calculations shall meet the requirements of the Construction Plan Check List, the Dunedin Code of Subdivision and Development 2010, and the NZS4404:2004 standard.*
- c) *All work associated with installing the Council-owned infrastructure shall be undertaken in accordance with the approved engineering plans, The Dunedin Code of Subdivision and Development 2010, and the NZS4404:2004 standard.*
- d) *On completion of construction of the servicing infrastructure, as-built plans shall be submitted to the Asset Planning Engineer, Water and Waste Services Business Unit, for approval. The as-built plans shall be accompanied by a quality assurance report of the installed infrastructure to be vested in Council.*

Stormwater Services:

- e) *That a Stormwater Management Plan for the subdivision shall be provided to Water and Waste Services for approval prior to construction commencing. The Stormwater Management Plan must outline:*
- Outline stormwater calculations which state the difference between the pre-development flows and post-development flows and how to manage any difference in flow;*
 - Clearly detail the stormwater management systems proposed for the development to accommodate for any runoff;*
 - Clearly detail impervious surfaces;*
 - Design drawings;*
 - Plans indicating secondary overland flow paths;*
 - Details of ownership and management arrangements;*
 - Evidence that the systems meets the requirements of NZS4404:2010 and the Dunedin Code of Subdivision and Development 2010.*
- e) *That the stormwater management shall be undertaken in accordance with the approved Stormwater Management Plan of condition 3(e) above.*
- f) *That, if the stormwater management requires individual on-site stormwater retention to be installed within any of the lots, a consent notice shall be prepared for registration on the title of that lot for the following on-going condition:*

'Prior to residential activity being established on this site, a stormwater retention tank to retain stormwater run-off from

*this site, shall be installed. The tank shall have a minimum storage capacity of **[volume]** litres, or another volume as agreed with the Water and Waste Services Business Unit at the Dunedin City Council. Primary discharge shall be through a restricted aperture located near the invert of the tank, which shall be specifically designed to pass 0.5 litres per second. Secondary discharge shall be by way of a standard 100mm diameter drain installed at the top of the tank which shall provide an escape route for water during extreme rainfall events.'*

The word [volume] in the above consent notice shall be replaced with an appropriate storage capacity, as determined by the Stormwater Management Plan of condition 3(e).

Services:

- g) An "application for Water Supply - New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to each un-serviced new lot. Details of how each lot is to be serviced for water shall accompany the application.*
- h) Upon approval by Water and Waste Services Business Unit, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*

Roading:

- i) The applicant is required to provide formal road engineering plans to Transport for consideration, for the road to vest (Lots 47 and 48), and the accessway (Lot 50). The roading infrastructure design shall comply with the Dunedin Code of Subdivision and Development 2010. The plans shall be submitted to, and approved by, Transport prior to construction.*
- j) The roading and accessway shall be formed in accordance with the approved engineering plans of condition 3(i) above. The full length of the accessway must be sealed.*
- k) Upon completion of construction of the all roading works, the roading infrastructure shall be tested to demonstrate that it meets the acceptance requirements of the Dunedin City Council.*
- l) Upon completion of all of roading works, the works shall be certified as having been constructed in accordance with the approved plans and specifications, and as-built plans shall be supplied to Transport.*
- m) That any tree planting to be undertaken in road reserve shall be determined in consultation with Transportation Operations and the Parks Officer – Trees. Species and location of trees shall be approved by the Transportation Operations manager prior to planting commencing.*
- n) That Right of Way D shall be formed to a minimum width of 3.0m, and be hard surfaced and adequately drained for its duration.*
- o) That any rights of way created in order to serve Lots 42, 45 and/or 46 shall be formed to the minimum width required by the District Plan for the number of residential units using the driveway, and shall be hard surfaced and adequately drained for its duration.*

- p) *The full length of Right of Way E must be formed to a minimum width of 5.0m, and shall be hard surfaced and adequately drained for its duration.*

General:

- q) *That a suitably qualified person shall determine if the land of the entire development is 'good ground' in accordance with NZS3604, Section 3.1. This verification will require site investigation in accordance with the standard, potentially including dynamic cone testing to 10m depth to quantify the potential for liquefaction for each dwelling. A report detailing the findings of this investigation shall be provided to Council for its records.*
- r) *That, if the site investigations of condition 3(q) above determines that the assessed potential movement of the ground is likely to be significant during a seismic event, and that ground remediation works are required, these ground remediation works shall be undertaken by the consent holder in accordance with conditions 3 and 4 above.*
- s) *That electricity and telecommunications shall be supplied to the net area of each allotment. These shall be installed underground from any existing reticulation.*
- t) *The subdivider shall provide to Council for approval 'as-built' plans and information detailing all engineering works completed in relation to or in association with this subdivision. The as-built plans shall be accompanied by a quality assurance report of the installed infrastructure to be vested in Council.*

Such "as-built" plans of:

- (i) *the water reticulation pipes laid within the subdivision shall include the locations of hydrants, valves, pipelines, service connections and manifold box installations and details of the pipeline materials and depth of cover over the pipelines. Written confirmation shall also be given that only approved materials have been used in the construction of the water reticulation in the subdivision.*
- (ii) *the foul and stormwater system shall show laterals for each lot.*

Consent Notices

- u) *That the consent notice of condition 8(t) of SUB-2017-32 registered on the titles of the subject site regarding the Taieri River floodbank shall be cancelled in respect of the subject site only.*
- v) *That a plan shall be prepared showing the location of the 20m building restriction area in relation to the boundaries of Lots 33 to 37. The plan shall be clearly labelled, and shall be attached to the consent notice of condition 8(w) below:*
- w) *That a consent notice shall be prepared for registration on the titles of Lots 33 to 37 for the following on-going condition:*

'A portion of this site is situated within 20m of the Taieri River floodbank as shown on the attached plan. There shall be no buildings constructed or any excavations occurring within the extent of this area without the approval of the Otago Regional Council.'

- x) *That a plan must be prepared showing the view shaft across Lots 42 to 46 and 53. The plan shall be attached to the consent notice of condition 5(y) below. The view shaft shall be clearly labelled as such.*
- y) *That a consent notice shall be prepared for registration on the titles of Lots 42 to 46 and 53 for the following on-going conditions:*

'The view shaft as shown on the attached plan shall remain clear of all structures at all times in order to secure the view of Balmoral Farmhouse from State Highway 87. Vegetation within the view shaft shall have a maximum height of 2.0m, or must be removed.'

Land Use LUC-2017-255

- 1. *The proposal shall be given effect to generally in accordance with the plan prepared by Paterson Pitts Group entitled, 'Lots 32 - 52 Being a Proposed Subdivision of Lots 10 and 27 Sub-2017-32,' dated 29 May 2017, and the accompanying information submitted as part of LUC-2017-255 received at Council on 31 May 2017, except where modified by the following:*
- 2. *That only one residential unit shall be established on each of Lots 33 to 46 and 53 SUB-2017-49.*
- 3. *That the residential activity of Lots 33 to 46 & 53 SUB-2017-49 shall comply with the performance criteria of the Residential 5 zone as listed in Rule 8.11.2 of the District Plan unless further resource consent is obtained.*

Earthworks:

- 4. *Before any construction works commence, the consent holder shall provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz advising who the supervisor shall be for the design and supervision of the earthworks.*
- 5. *The consent holder shall advise the Council, in writing, of the start date of the works. The written advice shall be provided to Council at least five (5) working days before the works are to commence.*
- 6. *The consent holder shall advise all neighbouring property owners and residents of the proposed works at least five (5) working days prior to works commencing.*
- 7. *All earthworks shall be designed and supervised by an appropriately qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*
- 8. *Detailed engineering design of all earthworks, including long-sections and cross-sections of the roads and the ponding area shall be submitted to the Council for approval prior to the physical works commencing. The engineering design of the ponding area shall show that the proposed excavations will not undermine the floodbank.*
- 9. *If the earthworks construction period requires heavy vehicles to use the State highway for access to and/or from the subject site, the consent holder shall consult with the NZ Transport Agency. A Construction Traffic Management Plan shall be completed and submitted to the NZ Transport Agency's network management consultant (Stantec New Zealand Ltd, Dunedin) at least seven working days prior to truck movements commencing.*

10. *A Soil Management Plan prepared by a suitably qualified person shall be submitted for approval prior to subdivision earthworks commencing, in order to address the management of soils subject to the NES.*
11. *The earthworks shall be undertaken in accordance with the approved detailed engineering design of condition 8 and the Soil Management Plan of condition 10.).*
12. *Any excavation works shall be inspected by an appropriately qualified person who must certify that the proposed construction or earthwork does not create or exacerbate instability on this or any adjacent property.*
13. *All practicable measures (including dampening of loose soil) shall be undertaken to ensure that dust, resulting from the proposed earthworks, does not escape the property boundary.*
14. *All practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision. To ensure effective management of erosion and sedimentation on the site during earthworks and as the site is developed, measures are to be taken and devices are to be installed, where necessary, to:*
 - *divert clean runoff away from disturbed ground;*
 - *control and contain stormwater run-off;*
 - *avoid sediment laden run-off from the site'; and*
 - *protect existing drainage infrastructure sumps and drains from sediment run-off.*
15. *Sediment fencing shall be utilised to catch all sediment runoff from the area of the proposed earthworks. This fencing shall remain in place until all exposed surfaces are in an erosion-proof state.*
16. *No soil disturbance or soil shifting, unloading, loading will take place if wind speed is higher than 14 metres per second if the soil is dry and prone to becoming airborne, unless a dust suppressant is applied.*
17. *All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site.*
18. *Any earth fill over 0.6m thick supporting foundations shall be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*
19. *Any areas of certified or uncertified fill within the new lots shall be identified on a plan, and the plan and certificates submitted to Council for Council records.*
20. *Cartage of any surplus excavated soil from the site must be to an approved clean fill site (i.e. where dumping of fill is permitted or authorised by consent). The consent holder shall advise any contractor accordingly. The contractor shall be responsible for keeping the roads clean of material.*
21. *Any material trafficked onto the road carriageway shall be removed as soon as possible at the consent holder's expense.*
22. *The consent holder shall:*
 - *be responsible for all contracted operations relating to the exercise of this consent; and*
 - *ensure that all personnel (contractors) working on the site are made aware of the conditions of this consent, have access to the contents of consent*

documents and to all associated erosion and sediment control plans and methodology; and

- ensure compliance with the consent conditions.
23. Should the consent holder cease, abandon, or stop work on site for a period longer than six weeks, the consent holder shall first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions, and shall thereafter maintain these measures for so long as necessary to prevent sediment discharge or dust emission from the site. All such measures shall be of a type and to a standard which are to the satisfaction of the Resource Consent Manager.
24. If at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures that have been affected/damaged by contractor(s), consent holder, developer, person involved with earthworks or building works, and/or vehicles and machineries used in relation to earthworks and construction works, shall be reinstated to the satisfaction of Council at the expense of the consent holder.
25. All construction noise shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999.

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

26. Note: the lower limits for Sundays and public holidays will likely prevent the operation of heavy machinery.

If the consent holder:

- a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder should, without delay:
- (i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - (ii) stop work within the immediate vicinity of the discovery to allow a site inspection by the Heritage New Zealand and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered should be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work should recommence following consultation with the Consent Authority, the Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) *discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder should without delay:*
- (i) stop work within the immediate vicinity of the discovery or disturbance; and*
 - (ii) advise the Consent Authority, the Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, should make an application for an Archaeological Authority pursuant to the Heritage New Zealand Act Pouhere Taonga 2014; and*
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.*

Site work should recommence following consultation with the Consent Authority.