

Report

TO: Hearings Commissioner Panel

FROM: Amy Young, Planner

DATE: 14 February 2018

SUBJECT: **RESOURCE CONSENT APPLICATION
SUB-2017-74, LUC-2017-407, LUC-2017-548
and LUC-2017-555
34 GORMAN STREET, MACANDREW BAY
A W and S J MONTGOMERIE**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 14 February 2018. The purpose of the report is to provide a framework for the Panel's consideration of the application and the Panel is not bound by any comments made within the report. The Panel 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.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraph 168 below, I consider that the proposal to establish three undersized Rural Zoned lots with associated residential activity in the rural zone is contrary to the relevant objectives and policies and the effects of the proposal on the Rural Zone will be more than minor. As a result, I have concluded that the proposal should be declined.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to subdivide an 18.49 hectare rural zoned site that is mostly within a landscape management area in the Operative Dunedin City District Plan into three lots at 34 Gorman Street, Macandrew Bay. Proposed Lot 1 will contain the existing dwelling and is proposed to have a total site area of two hectares with the proposed lot boundary following an existing fence line. This fence line demarcates a distinct difference in character from the wider pasture, compared with large swathes of amenity/native planting and large areas of mowed grass. Access to proposed lot 1 will be via an existing gravel access from the termination of Gorman Street. This lot will contain the existing detached garage located close to the Gorman Street entrance.
- [4] Proposed Lot 2 will be a vacant lot located next to Proposed Lot 1 and is to have a total site area of two hectares. The applicant proposes a 35m x 20m landscape building platform in the western half of the site with vehicle access proposed from the termination of Porterfield Street.
- [5] Proposed Lot 3 will contain the existing farm sheds and outbuildings and the resulting site area would be 14.3 hectares. Access to proposed Lot 3 will be over a new right of way (ROW) easement over proposed Lot 2. The applicant proposes to establish a 35m x 20m landscape building platform close to the western boundary in the location of the existing farm sheds. The majority of

this building platform is outside the landscape management area boundary. This building platform would be located approximately 10m from the boundary with 39 Wharfdale Street. A driveway will be constructed to the building platform. There is an existing ROW easement over 37 Wharfdale Street which could be available for vehicle access although this is not currently formed.

- [6] A landscape plan is provided with the application indicating the areas of proposed landscape mitigation planting for proposed lot 2 and 3. This planting is located downslope from each new building platform. The planting plan indicates the pine trees that are to be removed from the site as part of this proposed subdivision.
- [7] A copy of the application, including plans of the proposed subdivision, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [8] The site is located at the edge of the Macandrew Bay suburb in Dunedin on the western slopes of the Otago Peninsula. The site faces Maia and Burkes suburbs to the west over the Otago Harbour. The site contains one dwelling and detached garage and four farm accessory buildings. The site is predominantly in pasture with large mature shelterbelt trees planted in distinct rows across the site, some of which are located close to the western boundary the existing residential sites along Wharfdale Street. There is recent native planting located around the existing dwelling and within the natural gully system containing an unnamed water course that bisects the property. This planting was required as part of the mitigation planting required by the land use consent for the existing dwelling.
- [9] The site is bound to the northern and eastern boundaries and part of the southern boundary by a large 121 hectare rural block of land. The remaining portion of the southern boundary is bounded by a 13.79 hectare rural zoned site containing one residential unit. The western boundary is bounded by twelve residential 1 sites ranging in site area between 540m² up to 1,300m².
- [10] The site is legally described as Part Section 69 Block II Survey Order 6099 Otago Peninsula Survey District held in Computer Freehold Register OT 271/67 with a total area of 18.4916 hectares more or less.
- [11] The site has rolling, sloping topography beginning at a contour of 50m from the northwest corner of the site, up to 160m at the southeast corner of the site. The site has two physical road frontages at the termination of Gorman Street and Porterfield Street.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [12] The existing dwelling was established on the site (formerly with the address 44 Porterfield Street) in 2004 as a small self-contained cottage/garage via a land use consent RMA-2004-0260 which approved the establishment of the dwelling within a landscape management area. The existing dwelling in its current form was authorised by a land use consent in 2008 (LUC-2008-454) which approved the addition to the existing dwelling within the Landscape Management Area subject to conditions. One of the conditions was that landscaping required by RMA-2004-0260 be continued. Landscape planting required for the existing house included areas of planting surrounding the dwelling which have been planted out and a large area of planting in the gully to the south of the dwelling (approximately 100m from the southern boundary of proposed lot 1). The full extent of this landscape planting has not been established, it should cross the boundaries of both Lot 2 and Lot 3. (See consent and plans attached in APPENDIX 4)

ACTIVITY STATUS

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

Operative Dunedin City District Plan (Operative Plan)

- [15] The proposed use of the site is considered to fall within the definition of Residential and Farming Activity. The definition of Residential Activity within the Operative District Plan means:

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

Residential Activity also includes

(a) home occupation;

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

(c) home stay or boarding house for up to and including 5 guests

- provided that these are secondary to the permanent living accommodation.

- [16] The definition of Residential Unit within the Operative District Plan means:

Residential Unit - means a building or part of a building which is self contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents. Staff living on the site are not included in this limit.

- [17] The definition of Landscape Building Platform within the Operative District Plan means:

Landscape Building Platform - means a building platform which has been identified through an assessment of landscape effects and has been registered on the title by way of consent notice.

- [18] The definition of Farming Activity within the Operative District Plan means:

Farming Activity - means the use of land and buildings for the primary purpose of the production of vegetative matter or commercial livestock but excludes factory farming and forestry activity, and includes on-farm

extraction of aggregate for the sole purpose of constructing and maintaining access within that farm. (Note: 'Soil Conservation Planting', 'Pest Plant Control Planting', 'Amenity Planting' and 'Shelterbelt' as defined in this section do not constitute forestry activities. They are an element of farming activities).

- [19] The subject site is zoned Rural in the Operative Dunedin City District Plan and most of the site is located within the North West Peninsula Landscape Conservation Area with the exception of a 27-34m wide strip of land running parallel to the western boundary. The site within a mapped showing both visually prominent and recessive areas within the Landscape Conservation Area. Building any structure in the future within a landscape building platform under the Operative Plan Rules would require a controlled activity consent application under the Landscape Section of the Operative Plan. The Council Hazard records identify the site as subject to land stability landslide hazards of varying degrees of severity. The south east quarter of the site has an area of High Class Soils.
- [20] Resource consent is required as the proposal does not meet the following rules in the District Plan:
- [21] Subdivision is a restricted discretionary activity in accordance with Rule 18.5.1(i) within the Rural zone where the proposal complies with Rules 18.5.3 to 18.5.5, 18.5.9 and 18.5.10, and each resulting site is 15ha or greater
- [22] In this case, each proposed lot fails to meet the minimum site size requirements in the Rural Zone and in accordance with Rule 18.5.2 any subdivision that does not comply with Rules 18.5.1 or 18.5.1(A) shall be considered as **a non-complying subdivision activity**.
- [23] Rule 6.5.2 (iii) in the Rural Zone allows residential activity at a density of one residential unit per site, provided that the minimum area of the site is not less than 15 ha. The proposed sites are all below 15 hectares. The existing dwelling will breach this rule on the new site and therefore is considered to be a **non-complying land use activity**. The applicant seeks land use consent to breach the permitted density requirements for one residential unit per lot. New lot 1 will breach this rule by 13 hectares, new lot 2 will breach this rule by 2 hectares and new lot 3 will breach this rule by 0.9 hectares.
- [24] Landscape building platforms do not override the underlying rural zone rules. As the proposal is non-complying due to the breach in density the rules associated with permitted, controlled and discretionary (restricted) activities in the Operative Plan do not specifically apply. However, the relevant standards and assessment criteria under these rules remain as a guide for assessment of the environmental effects of the proposal. For example the bulk and location standards for permitted activities may assist in relation to assessment of rural character and amenity.
- [25] Rule 6.5.3 Conditions Attaching to Permitted Activities
- Yard Requirements – Buildings
The minimum yard requirements (excluding maimai and whitebait stands on the surface of water or post and wire fences which are accessory to farming activity) are:
- (a) Front Yards
- (i) All buildings 20 m
Each new building platform and the existing dwelling complies with this rule.
- (b) Side and Rear Yards

(i) Residential Unit 40 m

The proposed building platform on proposed Lot 2 will breach this rule by approximately 10m to the new internal boundary with proposed Lot 3.

The proposed building platform on proposed Lot 3 will breach this rule by approximately 30m to the existing external boundary with 35, 37, 39 and 41 Wharfedale Street.

The existing dwelling will breach this rule by approximately 1m to the new internal boundary with proposed Lot 3 and proposed Lot 2.

(ii) Buildings other than those for the housing of animals 6 m. The existing sheds on proposed Lot 3 will breach this rule by 4-6m with the external boundary to 41 and 43 Wharfedale Street.

- [26] Both the subdivision and land use aspects of the proposal are a **non-complying** activity.

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

- [27] The subject site is zoned Rural – Hill Slopes in the Proposed Second Generation District Plan. The site is within the North West Peninsula Significant Natural Landscape: Significant Natural Landscape. Parts of the site are identified as subject to land instability risks, and as containing High Class Soils. There is a very small portion of a mapped Archaeological Alert Layer overlapping the southern boundary of the site.
- [28] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance the following rule is applicable:
- [29] Rules 16.7.4 (minimum site size for rural zones) and related Rule 16.9.5.5 (assessment of subdivision performance standard contraventions) were given immediate legal effect at the time of plan notification. Accordingly, these rules need to be considered alongside the Operative Plan rules.
- [30] Subdivision is a restricted discretionary activity within the Rural - Hill Slopes Zone where the resultant sites comply with Rule 16.7.4.
- [31] Rule 16.7.4(1)(d) requires a minimum site size of 25 hectares. The proposal does not meet the exemption performance standards set out in 16.7.4(2) and 16.7.4(3). Proposed Lot 1 breaches this rule by 23 hectares. Proposed Lot 2 breaches this rule by 23 hectares and Proposed Lot 3 breaches this rule by 10.7 hectares. The proposed subdivision is a non-complying activity pursuant to Rule 16.7.4.3. At this time, assessment is limited to the performance standard set out under Rule 16.12. The relevant land use rules are not yet in effect.

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

- [32] 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.

- [33] A search of councils records has been undertaken to determine the likelihood of HAIL activities occurring on the subject site. The search did not find any conclusive evidence of HAIL activities occurring on the site. I do note that there is a possibility that the existing farm sheds are located within the proposed building platform on Proposed Lot 3 and these sheds could have been used to store chemicals associated with permitted farm activities i.e. storage and use of agrichemicals or motor vehicle/ engine reconditioning workshop. However, there is no evidence of the likelihood of such activity having occurred at this property.
- [34] It is therefore considered, more likely than not, that in the absence of further evidence, no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

NOTIFICATION AND SUBMISSIONS

- [35] No written approvals were submitted with the application.
- [36] The application was publicly notified in the Otago Daily Times on 1 November 2017.
- [37] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal.
- [38] 37 Wharfdale Street, 35 Wharfdale Street, 41 Wharfdale Street, 43 Wharfdale Street, 45 Wharfdale Street, 47 Wharfdale Street, 49 Wharfdale Street, 9 Maret Street, 40 Porterfield Street, 43 Porterfield Street, 32 Gorman Street, 35 Gorman Street and 172 Castlewood Street. All adjoining land owners. The application was also sent to Save the Otago Peninsula (STOP) inc. as an organisation who has declared an interest in development on the Otago Peninsula.
- [39] Submissions closed on 29 November 2017.
- [40] Three submissions were received by the close of the submission period. One submission was in support, two submissions were opposed and no submissions were neutral.
- [41] A submission from Janet Cox was received by the Council on 1st December 2017 signed and dated on the 30 November 2017, Submissions closed for this application on the 29th November 2017; the submission is late and the Committee will need to decide whether or not to receive the submission under Section 37 of the Act.
- [42] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Regan and Sue Boucher	Support	- The subdivision will provide other families the opportunity to experience the Otago Peninsula. - The subdivision site sizes are good which cannot be further subdivided thus providing future protection of the area. - The sites will have little to no	No

		visual impact or effect on the wider peninsula environment. ▪ Native planting and removal of pine trees will assist with positively enhancing the appearance of the area. The granting of this application will enhance property values for other properties from what appears to be a good use of unproductive land. ▪ The granting of this consent should be no different to the other side of the harbour where consents have been granted for building in rural zoned areas. ▪ As residents of the area we approve this application and recommend that the council should approve the application.	
Craig Werner	Oppose	▪ Landscape Visual Impact: negative effect on neighbours and residents across the harbour who will see residences and ancillary structures creeping up the hillside and the blurring of the sharp urban rural boundary. ▪ Cumulative Effects: This proposal will add to the lifestyle dwelling fragmentation of the upper slopes surrounding the Otago Harbour. Existing permitted rural residential development already places the landscape area at a cumulative tipping point. ▪ The proposal to create 2 hectare sites is repugnant and contrary to the plan. ▪ The proposal threatens plan integrity. ▪ Precedent: Fragmentation of the Rural Zone unless minor or unless a 'true exception' is present sets a precedent and alters developers expectations regarding the District Plan. This consent application follows a pattern of applications to breach District Plan rules for personal financial gain. ▪ The submitter seeks the application to be declined.	Yes

Save the Otago Peninsula (STOP) Incorporated Society	Oppose	▪ STOP is a society that seeks to address issues relating to conservation and landscape on the Otago Peninsula and around the harbour. ▪ The society seeks to protect and promote what has been consistently recognised as an outstanding and valued backdrop to the city in the form of a stunning skyline surrounding the harbour with green hillsides, rather than residences flowing down to the suburbs. ▪ Importance of the predominance of natural over human features. ▪ The 2GP recognises the importance of the area with a proposed Significant Landscape Overlay and Rural Hill Slopes Zone. ▪ Disregarding the application purely for landscape reasons lead to a dangerous precedent for the creation of 2 hectare lots, potentially allowing further subdivision upslope. ▪ The proposal is significantly non-complying due to the site size in both the operative and proposed plans. ▪ No reason is offered for this subdivision into non-complying lots, that could make this into an exception. ▪ The society disagrees with the statement that the proposal integrates well with the existing environment and disagrees with the conclusion that the adverse effects on amenity values of the area will be less than minor. ▪ The society argues that the pine tree shelterbelt removal is not likely to have any real positive effects on neighbours, and states that it is likely to enhance the view from the proposed building platforms. ▪ Landscape Effects: The society is concerned about the removal of the pine trees as they would provide screening from across the harbour. The proposal to	Yes
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		plant natives would not provide the same amount of screening. ▪ By assessing the landscape effects of only this property there is a danger of disregarding the cumulative effects of such residential subdivisions. ▪ Provision of water supply and disposal of stormwater and sewage may cause issues on the proposed lots close to existing residences and also cause issues in relation to proximity to watercourses. ▪ The proposal is seen to be contrary to the policy framework of the Operative and not a true exception. The application could create a precedent that could imperil the plan integrity.	
Janet Cox (Late submission)	Support	▪ I have no problem with the removal of the Pine Trees, they will continue to grow and need to be removed at some stage. ▪ I have no objection to the subdivision.	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

PERMITTED BASELINE

[44] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity. In this situation the permitted baseline has little relevance as the overall site at 18.49 hectares is only large enough for the existing situation of one permitted residential unit in the Rural Zone, which has been authorised by

consent under the rules in the Landscape Section. Subdivision is not a permitted activity in the Operative or Proposed Plan. The permitted baseline has therefore not been considered to provide useful comparison in this assessment.

ASSESSMENT OF EFFECTS (OPERATIVE DUNEDIN CITY DISTRICT PLAN)

[45] The assessment of effects is guided by the assessment matters in Section 18 (Subdivision), Sections 6.7 (Rural) and 20.6 (Transportation) of the District Plan. Accordingly, assessment is made of the following effects of the proposal:

- Sustainability
- Subdivision Design and Physical Limitations
- Subdivision Infrastructure
- Transportation
- Hazards
- Amenity Values, Bulk and Location and Visual Impact
- Landscape
- Conflict and Reverse Sensitivity
- Positive Effects
- Cumulative Effects

Sustainability (Assessment Matters 18.6.1(b) and 6.7.1)

[46] These provisions encourage protection of the natural and physical resources and the maintenance and enhancement of amenity values. The applicant states that the proposal is not inconsistent with the policy framework of the Sustainability Section of the plan as the proposal is considered to be a sustainable use of the land as the site cannot be seen to be an economic farm unit (even at 18 hectares in this location). The applicant has designed the subdivision to ensure the bulk of the open pasture land is contained in the rural lot (the larger lot) and this will allow protection of landscape values in the area. The proposed native plantings on the site will make a positive contribution to the environment in respect to landscape and ecological values. While there is some justification in the applicants argument that an 18 hectare site is too small to be an economic farm unit, especially given that the proposed site size for this area in the 2GP is 25 hectares, I do not see how reducing the size of the site by creating two very small rural zoned sites aligns with the sustainability policy framework. There is nowhere in the operative plan or the proposed plan that requires a rural zoned site to be an economic farm unit. Issue 6.1.2 in the Rural Zone Section identifies how the fragmentation of rural land can adversely affect the sustainable management of natural and physical resources:

[47] *Rural subdivision can contribute to fragmentation of the rural land resource. Fragmentation of land may adversely affect the ability of the land resource to meet the needs of future generations. The division of rural land into smaller parcels limits the versatility of rural land for primary production activities. Evidence from elsewhere in New Zealand indicates that, while some small sites may be used intensively, generally productive activities on rural land decline with decreasing parcel size. In particular, smaller sites are considerably more likely to be removed from productive activity altogether as a consequence of subdivision. **The loss of versatility may result in subsequent pressure for residential development on 'uneconomic' parcels.** The increase in additional buildings and roading infrastructure associated with fragmentation reduces the land available for productive use and may affect the efficient use of the land. The development of residential dwellings in rural areas that are not associated with the productive use of the land may contribute to both the fragmentation of individual properties and to the fragmentation of localities within rural areas through ribbon development along roads.*

- [48] Rural land is zoned for the main purpose of primary production, economic wellbeing and economic stability created from this use of rural land is an important contributor to the economy locally and nationally. Land fragmentation in the Rural Zone reduces the ability for the rural zone areas of Dunedin to remain viable and sustainable. The fragmentation of rural land, in most cases creates effects on the open space and rural character that are not able to be reversed. The applicant promotes native planting to mitigate the effects of the proposed increased density. This does not mitigate the loss of Rural Land to small lot sizes.
- [49] The proposal to create three undersized rural lots held in separate ownership does not promote sustainable management of the land and does not promote the safeguarding of resources for future use.

Subdivision: Lot Size and Dimensions (Assessment Matter 18.6.1(q)) and Physical Limitations (Assessment Matter 18.6.1(k))

- [50] The District Plan controls the extent to which any allotment to be created by the subdivision has physical limitations which would render it unsuitable for future use. The proposal creates one lot of 13.49 hectares which has been chosen by the applicant as the area most suitable for farming, as it has the most usable areas of pasture. Ultimately there is enough site area for each lot to contain a dwelling and associated on-site water supply and waste disposal systems. Each site will have some limitations imposed as there is a requirement for existing landscape mitigation planting for the existing dwelling and this application promotes more landscape mitigation planting. All areas not required for landscape planting, vehicle access and the building platform will be able to be used for some form of permitted farming activity. However, as noted in the sustainability assessment all the lots are well below the minimum size for permitted rural lots. With lots 1 and 2 in particular, the land area is limited to a point that the principal land use that can be expected is residential activity, with any farming element being incidental to the residential use and likely to be of the nature and scale of a hobby activity.

Subdivision: Easements (Assessment Matter 18.6.1(i))

- [51] There is an existing right of way easement over 37 Wharfedale Street (Lot 18 Deposited Plan 4332 (Computer Freehold Register OT342/189) registered on the Certificate of Title. This right of way access would be available to Proposed Lot 3 should they require this access. This easement will be cancelled in respect of Proposed Lot 1 and Proposed Lot 2. The access to proposed lot 3 in this subdivision application is from Porterfield Street over a new right of way easement over proposed Lot 2 in favour of proposed Lot 3.

Subdivision: Infrastructure (Assessment Matters 18.6.2(d), (e), (i), (j), (n), (o) and (p)) and Water and Effluent Disposal (Assessment Matter 6.7.1)

- [52] There are no additional services proposed as part of this subdivision application. The applicant seeks that the existing dwelling on Proposed Lot 1 retains its existing services. The Council's Consents and Compliance Officer, Three Waters has reviewed the application and makes the following comments:

- [53] *Water Services*

A review of the Council's GIS records indicates that the proposed subdivision is located within the Rural zone and located outside the Rural Water Supply Areas as shown in Appendix B of the Dunedin City Council Water Bylaw 2011. Consequently, no reticulated water supply is available to the proposed subdivision.

- [54] *This property is currently serviced for water to the existing dwelling via an 'extraordinary supply' which is located at the boundary on Porterfield Street. When this property is subdivided, the water connection will be located on the boundary of proposed lot 2, therefore the connection will need to be cut and plugged and a new connection established on Gorman Street at the property boundary of proposed lot 1. All extraordinary supplies must be metered and have a Reduced Pressure Zone (RPZ) backflow prevention device installed as specified in the Dunedin City Council Water Bylaw 2011. The RPZ device must be installed immediately downstream of the water meter, just inside, and as close as practicable to, the customer's property boundary.*
- [55] *Stormwater collected from roof surfaces may be used for domestic water supply for proposed lots 2 and 3 and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.*
- [56] *It is noted that proposed lots 1, 2 and 3 have council owned infrastructure (water supply mains) located within the lots. Any building constructed on these lots must meet the requirements of Section 5.5 of the Dunedin Code of Subdivision and Development (2010) in relation to building in close proximity to Council infrastructure, unless otherwise approved by Water and Waste Services.*
- [57] Wastewater Services
- This property is currently serviced for wastewater to the existing dwelling via an out-of-zone wastewater connection. A service easement may be required for proposed lot 1 if the wastewater lateral crosses one of the new lots.*
- [58] *As the proposed subdivision is located within the Rural zone, there are no reticulated wastewater services available for connection for proposed lots 2 and 3. Any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.*
- [59] Stormwater Services
- As the proposed subdivision is located within the Rural zone, there is no stormwater infrastructure or kerb and channel discharge points. Disposal of stormwater is to water tables and/or watercourses onsite, or to suitably designed onsite soak-away stroke infiltration system or rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.*
- [60] Firefighting Requirements
- All aspects relating to the availability of the water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies*
- [61] Private Drainage
- New lot 1 has an existing dwelling which is serviced with wastewater drainage to the DCC wastewater network.*
- [62] *News lots 2 and 3 shall have separate wastewater laterals for each new lot to a septic tank designed by an approved septic tank and effluent disposal*

system designer. Stormwater from the roof can be used for domestic water supply with a 25,000 litre tank for each new lot.

[63] Easements

An easement in gross in favour of the Dunedin City Council is required over the Council owned water main located within lots 1, 2 and 3. The easement must be made in accordance with Section 6.3.10.3 of the Dunedin Code of Subdivision and Development 2010. A service easement may be required for the wastewater lateral which services the dwelling on proposed lot 1."

- [64] Subject to compliance with recommended conditions of consent, the adverse effects of the proposal on the City's reticulated infrastructure are considered to be no more than minor. The building platform on proposed Lot 2 is located upslope of an existing watercourse. On-site effluent disposal systems are required to comply with the requirements of the Otago Regional Plan: Water. This will be addressed at the time of building consent. The site is large enough to locate a suitably designed effluent disposal system so that it does not impact on the unnamed watercourse.

Subdivision: Transportation (Assessment Matter 18.6.1(c))

- [65] Vehicle access to Proposed Lot 1 is a gravel access from Gorman Street. The proposed access to Proposed Lot 2 and 3 are new vehicle accesses over former farm tracks. To establish these accesses to a suitable standard earthworks may be required that may breach the permitted earthworks standards. The applicant states that no earthworks is proposed as part of this subdivision application, therefore an additional land use consent to address the earthworks proposed for both the access and the building platform would be required. The application was forwarded to Council's Transportation Operations department for comment. The subdivision section of the Operative Plan controls any impact of roading and access on water bodies, ecosystems, drainage patterns and the amenities of adjoining properties. There is not enough detail in the application to establish what effects if any the proposed formation of these vehicle accesses will have on the environment. The Transportation Planner/Engineers comments are as follows:
- [66] **"Application:** *Consent is sought to subdivide the above property into three undersized rural lots. Lot 1 will be 2.0ha and contain an existing dwelling. Lot 2 will be 2.0ha with a proposed building platform. Lot 3 will be 14.3ha with a proposed building platform.*
- [67] **Access:** *Vehicle access to the dwelling within Lot 1 will be via the existing entrance from the eastern end of Gorman Street. Given that the dwelling is an existing activity, and the use of the vehicle access to it is anticipated remain unchanged as a consequence of the proposed subdivision, the existing vehicle access is considered to be acceptable to remain.*
- [68] *Vehicle access to Lots 2 and 3 will be via from the eastern end of Porterfield Street, via proposed Right of Way A. The submitted survey plan shows the vehicle access formation to Lot 3 to branch from Right of Way A toward the south, running within Lot 3 adjacent to the Lot 2/Lot 3 boundary.*
- [69] *As per Rural zone requirements, and presuming that residential activity will be the primary activity within Lots 2 and 3, Transport considers it is reasonable to require Right of Way A to be a minimum 3.5m formed width, hard surfaced from the edge of the carriageway of Porterfield Street to a distance not less than 5.0m inside the property boundary, and be adequately drained for its duration.*

- [70] *It is advised that the vehicle crossing to Right of Way A, between the road carriageway and the property boundary, is within legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from the DCC Transport Group). It is advised that a formal agreement be drawn up between the owners/users of all private accesses in order to clarify their maintenance responsibilities.*
- [71] **Parking/Manoeuvring:** *It is considered that there is ample space within Lot 1 to provide for the parking needs of the existing dwelling, and enable vehicles to drive onto and off Gorman Street in a forward direction. It is advised that in the event of any future development on the site (i.e. Lots 2 and 3), Transport would assess provisions for parking and manoeuvring at the time of resource consent/building consent application.*
- [72] **Generated Traffic:** Transport anticipates that the adverse effect of traffic generated by *the* proposed subdivision will be no more than minor."
- [73] The Transportation Planner is satisfied that the adverse effects of the activity on the transportation network would be no more than minor, subject to compliance with recommended conditions of consent.

Hazards (Assessment Matter 18.6.1(t))

- [74] The entire site is annotated in the Hazards Register as being subject to multiple Land Stability – Land Movement Hazards of various degrees of risk ranging from very slight risk to very severe risk in the Operative Plan. The building platform for proposed lot 2 is straddles an area of moderate risk and very severe risk of land movement. The building platform proposed for Lot 3 is located within an area identified as a very severe risk of land movement.
- [75] The applicant seeks to establish two additional dwellings with associated on-site stormwater and waste water disposal. Vehicle access to the new building platforms and potentially the establishment of the building platforms themselves will require some form of earthworks. Earthworks are permitted on the proposed sites provided that they meet the permitted thresholds in the Earthworks Section of the plan. The application makes reference to the establishment of retaining walls, benched building platforms and vehicle access. However, no land use consent is proposed for the earthworks as part of this subdivision application. More detailed information is required to assess the potential effects of these earthworks. This subdivision application assesses the feasibility of establishing additional dwellings on this site and the feasibility of gaining access to the building platforms.
- [76] Having regards to this assessment, it is considered that there are potential risks from natural hazards that need addressing as part of this subdivision in relation to the building platform on Proposed Lot 3. However neither the Council's Geotechnical engineer or the applicants engineer recommend that this site cannot be developed or that the application should be declined as a result of the existing hazards. Should the application be granted the risks from natural hazards can be appropriately mitigated through the imposition of appropriate conditions as recommended by Stantec.
- [77] The application was reviewed by the Otago Regional Council. Warren Henley , Senior Resource Planner Liaison, His comments are as follows:
- [78] *The issue of particular interest to ORC is the land instability. The application provided appropriate comment on these issues with a reputable geotechnical report that the DCC can consider in making its decision. ORC*

would support the recommendations of the GeoSolve report being a requirement of any consents granted. I couldn't see the report assessed any potential risk (or mitigation) for disposal of storm/wastewater where it may increase the land instability, but I expect if this is of any concern GeoSolve could address this. If there is the potential of any risk from water disposal to land, siting the disposal fields well away from any stability risk area would likely be a potential solution.

[79] *Given that the entire site is located in a land stability hazard area it is the applicants responsibility to ensure that the risk in relation to the effects of the proposal on land instability and any other potential hazard can be mitigated prior to the subdivision of the lots and not left for the future owners of the new lots.*

[80] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance. In addition, under Section 106 of the Resource Management Act 1991, the Council may decline the subdivision consent, or it may grant the subdivision consent subject to conditions, if there is a significant risk from natural hazards.

[81] Natural Hazard is defined in section 2 of the RMA as

means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

[82] The assessment of the risk from natural hazards requires a combined assessment of:

- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
- (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
- (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

[83] The proposed 2GP indicates a reduced area of land stability hazard mapping across the subject site, the proposed hazard categories use a different scale for measuring risk with lower hazard numbers being attributed to higher risk. The building platform on proposed lot 2 will straddle a Hazard 1 and Hazard 2 Land Instability areas. The building platform on proposed lot 3 will be within the Hazard 1 Land instability areas.

[84] The 2GP classifies risk as follows:

[85] *Dunedin's hazard prone areas are managed through six overlay zones, and two mapped areas (swales and dune systems). Initial assessments have established that risk (as defined in the guidance above) within the hazard overlay zones is as follows:*

Table 11.3 Risk within hazard overlay zones

<i>Hazard overlay zones</i>	<i>Risk (in accordance with the guidance on defining risk in Table 11.1)</i>
<i>Hazard 1 (flood) Overlay Zone</i>	<i>High</i>
<i>Hazard 1 (land instability) Overlay Zone</i>	
<i>Hazard 2 (flood) Overlay Zone</i>	<i>Moderate</i>
<i>Hazard 2 (land instability) Overlay Zone</i>	
<i>Hazard 3 (flood) Overlay Zone</i>	<i>Low</i>
<i>Hazard 3 (coastal) Overlay Zone</i>	

- [86] *At this stage, no areas have been identified as being exposed to a high or moderate risk from coastal hazards (Hazard 1 or 2 overlay zones), but areas may be included in these categories on the basis of future assessments.*
- [87] *While no areas have been identified as being exposed to a low risk of land instability (as hazard 3 overlay zones), many sites in Dunedin could fit within this category, but risk is managed primarily through the earthworks provisions, and Building Act 2004 requirements (e.g. foundation design).*
- [88] *Assessments of risk have been done on a catchment, landslide, or area-wide basis, often as a desk top assessment drawing on previous on-the-ground investigations and observations, and should be used as a starting point only. Local, site specific assessments are recommended. Where site specific assessments have been carried out and these have been provided to the DCC or Otago Regional Council, these may be available through the DCC Hazard Information Management System, or the Otago Regional Council online Otago Natural Hazards Database.*
- [89] *It is acknowledged that risk can be influenced by site or area specific factors, such as topography, elevation, soil make-up and other factors. Factors such as these should always be taken into account when assessing risk in relation to a particular proposal.*
- [90] *In addition, swales and undeveloped parts of dune systems are identified as mapped areas. Swales form part of the natural drainage system of the Taieri and can act to convey floodwater away from development. In these areas development is considered to be inappropriate, due to the role these features play in mitigating the effects of natural hazard events. Dune systems buffer land from coastal processes.*
- In the hazard 1 (land instability) overlay zone, areas identified as active landslides with a high sensitivity to either environmental or human induced modifications; that have experienced activity within the last 50 years; and where there is a high risk to people or property; and*
 - in the hazard 2 (land instability) overlay zone:*

- *areas identified as definitely or likely to be a landslide, which have a moderate to high sensitivity to environmental or human-induced modifications; and*
- *areas identified as mine shafts.*

[91] The applicant provided further information from GEO Solve addressing the risk of developing on this site in relation to the land stability hazard. The applicants have provided a map from GNS science that does not have any land stability hazards over the subject site. This map is being considered by the 2GP hearings panel and may result in a reduction of land stability mapping in the area. However, at this point in time the site is classified as subject to land stability hazards and the proposed plan in its notified form shows areas of potential land instability hazards. This information makes it difficult to assess the level of potential risk created by the proposed development.

[92] The application was reviewed by Councils Consultant engineer, Stantec New Zealand Ltd. The engineer advised:

We have assessed the application in relation to the hazard register, street files and available aerial photography. We have not visited the site. We have the following comments to make regarding the application.

[93] Hazards

From the Hazard Register, street files, and previously sent emails; for both this title and nearby properties the following hazards have been identified:

- *Hazard ID 10118: Land Movement Dickson St Landslide B Inactive Slump*
- *Hazard ID 10127: Land Movement – Peninsular Landslide Class 1 Very Slight. This is identified in the location of Proposed Lots 1 and 2*
- *Hazard ID 10127: Land Movement – Peninsular Landslide Class 2 Slight Risk. This is identified in the location of Proposed Lot 1*
- *Hazard ID 10127: Land Movement – Peninsular Landslide Class 3 Moderate. This is identified in the location of Proposed Lot 2*
- *Hazard ID 10127: Land Movement – Peninsular Landslide Class 4 Severe*
- *Hazard ID 10127: Land Movement – Peninsular Landslide Class 5 Very Severe. This is identified in the location of Proposed Lot 2 and 3*
- *Hazard ID 11291: Land Movement – Dickson St/Wharfdale Landslide*
- *Hazard ID 10118: Land Movement – Dickson Street Landslide Monitoring*

[94] Global Setting

The underlying geology consists of Plagioclase-augite-olivine-basalt from the first main eruptive phase. The site has numerous slopes ranging from less than 12 degrees up to 35 degrees. The location of the existing dwelling on lot one, is located in relatively flat area (less than 12 degrees). The proposed building platform for Lot 2 is located with steeper slopes in the area and in close proximity to a natural gully with slopes ranging from 26 degrees to less than 12. The proposed building platform for Lot 3 is located with slopes in the range of 15 – 20 degrees.

[95] Earthworks / Excavations / Retaining Structures

No major earthworks are proposed as part of the application. The applicant notes that a retaining wall will be required uphill of the proposed building platforms for lots 2 and 3. The maximum heights of the retaining walls will be 3m. The application notes that Lot 2 will require minimal earthworks for the building platform as a previous owner has excavated the site to near level. Lot 3 will require further excavations to level the platform.

[96] Discussion

The proposed dwelling for lot 3 is located in an area of Class 5 - Very Severe risk of Land Movement and the proposed dwelling for Lot 2 is located in an area of Class 2- slight risk. The underlying lithology is well known for its sensitivity to over excavation and ground water. The applicant has not acknowledged this risk of land stability and it is recommended that a site specific geotechnical assessment is completed.

[97] *The proposed building platform for Lot 2 is to be built on top of a level platform which was previously excavated by previous owner. There is no indication of that this is natural ground and there is a risk that there may be un-engineered fill under this building platform.*

[98] *There is an existing gully running between Lot 2 and Lot 3 in which an access road is proposed to be built across. The applicant indicates the access way will follow an existing benched track and a new culvert will be required but there is no indication of culvert sizing or potential effects.*

[99] *There are general potential instabilities of concern with regard to the land stability of the site. The proposal will not create or exacerbate instabilities on adjacent properties."*

[100] The applicant submitted a Geotechnical report from GEOSOLVE to address potential risk from natural hazards. Based on the reduction of land stability mapping for the 2GP based on information from GNS science they assume that the landslides are either considered inactive or unlikely to present a hazard. The monitoring of the Dickson Street landslide by the Dunedin City Council appears to indicate that landslide hazard is unlikely to apply at the sites. GEOSolve suggest that the consultants who advised on the proposed amendments to the 2GP hazard overly have considered the landslide hazard zones and have concluded that they are not applicable for the purposes of the 2GP.

[101] Investigations and test pitting undertaken by GEOSolve identified weathered volcanic rock at shallow depth and hence global instability is considered very unlikely at this location. If further qualification of risk is required at Lot 3 then drilling may be required as rock was not proven at this location. Geosolve is not able to quantify risk until drilling is undertaken on this lot and therefore they recommend that a condition is imposed for Lot 3 that site specific geotechnical investigations are required for building consent to adequately address slope stability considerations.

[102] GEOSolve recommend that at the detailed design phase for any dwelling should be carried out in consultation with both the structural and geotechnical engineer. Geotechnical supervision is recommended during construction to confirm the conditions assumed in the preliminary report are consistent in order to prescribe any further requirements. The current investigation data confirms that the proposed lot 2 building platform is likely to be suitable for conventional shallow foundations once excavations have been carried out to expose good ground. This should be confirmed by a Geotechnical Specialist. Provided that the foundations rest on good ground, then design in accordance with NZS 3604

is likely to be appropriate. Based on the assessment undertaken by GEOSolve the proposed building platform on the proposed lot 3 building platform requires further specific investigation. Should the Panel grant this consent, I recommend conditions of consent including a condition requiring confirmation by suitably qualified individuals that each new building platform is suitable for development.

Amenity Values, Bulk and Location and Visual Impact (Assessment Matters 6.7.3, 6.7.9 and 6.7.13)

[103] The proposed Landscape building platforms are in locations that would breach bulk and location rules if the proposed rural sites were of complying density. The performance standards for permitted, controlled and restricted discretionary activities do not specifically apply to non-complying activities. However it is useful to illustrate the bulk and location rules in relation to assessment of Rural Character.

[104] Rule 6.5.3 Conditions Attaching to Permitted Activities

Yard Requirements – Buildings

The minimum yard requirements (excluding maimai and whitebait stands on the surface of water or post and wire fences which are accessory to farming activity) are:

(a) Front Yards

(i) All buildings 20 m
Each new building platform and the existing dwelling complies with this rule.

(b) Side and Rear Yards

(i) Residential Unit 40 m

The proposed building platform on proposed lot 2 will breach this rule by approximately 10m to the new internal boundary with proposed lot 3.

The proposed building platform on proposed Lot 3 will breach this rule by approximately 30m to the existing external boundary with 35, 37, 39 and 41 Wharfdale Street.

The existing dwelling will breach this rule by approximately 1m to the new internal boundary with proposed lot 3 and proposed lot 2.

(ii) Buildings other than those for the housing of animals 6 m. The existing sheds on proposed Lot 3 will breach this rule by 4-6m with the external boundary to 41 and 43 Wharfdale Street.

[105] A submission in support of the proposal identified the positive effects created by removing the large pine trees close to the boundary with the residential lots along Wharfdale Street. Submissions in opposition highlighted the importance of the predominance of natural over human made features. The opposing submissions state that this proposal will not integrate well with the existing environment.

Landscape (Assessment Matters 18.6.1(g) and 18.6.1 (h) and 14.7.1-14.7.5)

[106] As the overall proposal is a non-complying activity the Landscape Assessment Matters have been used as a guide as to whether the subdivision is acceptable in relation to the effects of the North West Peninsula Landscape Conservation Area. These assessment matters include: Visibility, Adverse Effects, Sympathetic Siting and Design, Landscape Features and Characteristics and Compatibility of Scale and Character.

[107] The operative plan Subdivision Section controls the appropriateness of retaining amenity planting or planting trees and other vegetation on the site to maintain or enhance the amenity of the area and the need for conditions relating to landscape planting and maintenance and the appropriateness of any building platform, including its location in relation to any vehicle access or service connection to it. In Landscape Management Areas, the appropriateness of identifying a "Landscape Building Platform", which may include:

- restrictions on floor area and height of buildings and associated site development; and
- requirements for landscaping the site.

[108] The establishment of landscape building platforms at the time of subdivision allows the creation of suitable platforms that are considered to be appropriate for development within the landscape management area and are then registered against the certificate of title so that anyone in the future can establish buildings on this platform as a controlled activity provided that they meet the minimum visual controls set out in the landscape rules.

[109] The applicant's Landscape Architect, Hugh Forsyth, Site Environmental Consultants, has assessed the effects of the proposed building platforms and has provided supporting evidence for establishing buildings on the proposed platforms subject to conditions.

[110] The photos on pages 7-11 of the landscape assessment report indicate that the building platform from Lot 2 will be clearly visible from viewpoints 3, 4 and 5 provided in the report dated July 2017. Proposed lot 3 is located behind and in front of existing pine trees. The large pine trees to the south are to be removed as part of this proposal. The applicant also intends to undertake canopy thinning of up to 15% of the remainder of the trees between the lot and lower access track and therefore it is hard to tell by looking at the photos and when undertaking a visit to these locations how visible the building platform on proposed lot 3 will be.

[111] The proposed landscaping for proposed lot 2 is situated some distance downhill from the proposed platform. The location of this planting will tie in well with the existing gully planting but it is unclear if it will have any visual mitigation /screening effect on a proposed dwelling due to the separation distance and its location downslope. There is a tension on each new building platform which is created by trying to protect views outward from the platforms themselves whilst allowing some form of mitigation or softening of effects on the wider rural and landscape character.

[112] The key conditions for each new building platform on lot 2 are proposed by the applicant's landscape architect as follows:

- Maximum elevation of 7m above existing non-excavated ground level including the roof structure.
- Maximum retaining height of 3m across the eastern
- A stepped design for two level structure that extends eastward.

- Maximum retaining wall height of 3m across the eastern side of the curtilage and to extend no further than 2m north of the residential structure
- Maximum reflectivity value (RV) of 40% for roofs and 50% for external house/retaining walls.
- Approved wall finishes include wood products, smooth faced concrete, stone, or a combination of these materials. Bare concrete block, plastered walls and tiled roofs are excluded. Roof materials are to include long-run colour steel sheet or similar
- Low reflective glass to be used for windows
- Concrete access ways to be tinted to 50% reflectivity value.
- External lights are to be limited to ground based garden lights, wall lights and back door security lights. Driveway "street lights" are not acceptable.
- Boundary fences are to have an open character and not to exceed 1.2m high, with further visual barriers to the east, north or west to be provided by native shrub planting.
- Planting of native shrub cover to be undertaken in the areas shown within the first planting season following construction.
- Planting to be at one plant per 1.5m at PB3 size with liquid rain and a fertiliser pellet per plant. Success rate of 80% at 5 years from consent.

[113] The key conditions for each new building platform on lot 3 are proposed by the applicant's landscape architect as follows:

- Maximum elevation of 7m above existing non-excavated ground level including the roof structure.
- Maximum height for a retaining wall across the rear of the curtilage of 3m.
- A maximum height of 1m for retaining associated with the access way.
- Maximum reflectivity value (RV) of 40% for roofs and 50% for external house/retaining walls.
- Low reflective glass to be used for windows
- Approved wall finishes include wood products, smooth faced concrete, stone, or a combination of these materials. Bare concrete block, plastered walls and tiled roofs are excluded. Roof materials are to include long-run colour steel sheet or similar
- Concrete accessways to be tinted to 50% reflectivity value.
- All retaining walls are to be stained or tinted to maximum 50% reflectivity value or to be planted with climbers to a specification agreed by council.
- Planting of native shrub cover to be undertaken in the areas shown within the first planting season following construction.

- Planting to be at one plant per 1.5m at PB3 size with liquid rain and a fertiliser pellet per plant. Success rate of 80% at 5 years from consent.

[114] The applicants Landscape Architect assesses the potential landscape affects associated with Lot 3 in the short term to be less than minor. The most immediate change will be construction effects in a presently disused rural land area and the removal of pine trees. Views from the north/west side of the harbour to the new building site are to be reduced by keeping the pine tree belt to the east of the building platform. There are no proposed conditions requiring the retention of any existing pine trees as mitigation planting. If any building established on this platform relies on these trees for visual mitigation these trees will need some form of condition protecting them. A planting plan will need to be provided showing how the same type of mitigation could be achieved if these trees die, fall over or need to be removed for safety reasons.

[115] Council's Landscape Architect, Barry Knox has reviewed the application and makes the following assessment:

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

[117] *The application includes an assessment by Landscape Architect Hugh Forsyth of Site Environmental Consultants. I consider this review to be comprehensive and constructively reasoned. The conclusion reached by Mr Forsyth is that the potential landscape and visual effects are assessed as being "low", especially following construction activity and if site restoration activity has been implemented. Recommended conditions are proposed to provide greater assurance of this conclusion.*

[118] *Leaving aside the wider planning considerations already alluded to, I consider that the potential adverse landscape and visual effects of the application would be low to moderate after an initial period of site restoration, and assuming that the conditions recommended in the application would be fully adhered to.*

[119] *In terms of potential adverse effects on the NWPLCA features values, a key consideration of the subject site is elevation. In my 2GP comments attached at Appendix 1, I noted that the subject site NWPLCA values would be potentially much more adversely affected at higher elevations. The proposed dwelling development (lots 2 and 3) would be established quite close to the lower elevated part of the site, leaving the much more visible upper elevations largely as they are now. In my opinion any proposed development further up the site would create more than minor adverse effects.*

[120] *If this application were to be approved, these proposed lower elevation sites are critical. From a distance, from either side of the harbour, the proposed new dwellings would largely be seen as an extension of existing houses and curtilage at the lower part of the peninsula, and adverse landscape effects would therefore not be nearly as pronounced if the rural character of the slopes further up were to be encroached on.*

[121] **Features and Characteristics of the NWPLCA to be Protected.** *The Dunedin City District Plan notes these following issues for protection in the NWPLCA:*

- *The visual dominance of natural landform and other natural elements such as remaining indigenous vegetation over cultural or human-made landscape elements, eg buildings or plantations.*
- *The extent, integrity, coherence and natural character of the major natural elements such as landform, streams and areas of indigenous vegetation.*
- *The extent and quality of views from the principal public routes and viewpoints.*
- *The natural characteristics of the higher rural land which:*
 - *contrast with the developed harbour edge settlements. This contrast remains a fundamental characteristic of the harbour landscape*
 - *ensure that the overall scale of these settlements does not grow to become too dominant in this small scale landscape*
 - *ensure that there is visual containment and separation of these settlements.*
- *The extent and quality of the outstanding panoramic views which are possible both of the area and from the area.*
- *The human-made features which are relics of the past and provide highlights at the detailed scale, eg stone walls, remnant shelter plantings, Larnach Castle.*
- *The skyline generally defined by natural elements.*
- *The following significant landform features listed in the NZ Geological Society Geopreservation Inventory for the Otago Region:*
 - *Harwood earth flow.*
 - *The extent and quality of areas of regenerating indigenous bush. These enhance the natural qualities of the area.*

[122] **Effects of the Proposal on NWPLCA Values.**

As noted earlier, with landscape mitigation, effects on the values of the NWPLCA are likely overall to be minor to moderate. The proposal would introduce two new dwellings into an area which has a predominantly natural character, but this domestication would not be dominant because of the close association of nearby lower elevation dwellings.

[123] *If the resource consents were to be approved, I recommend that the conditions outlined in the application Landscape Report at sections 6.8 and 6.17 for proposed lots 2 and 3 (or close variations of them) should be adopted.*

[124] *The applicant's Landscape architect, Mr Forsyth concludes that the proposed development will not detract from existing rural or landscape values and will add to the environmental quality of neighbouring properties. Potential landscape and visual effects are assessed as being less than minor. He recommends that the consent be granted for the proposed 3-lot subdivision on the basis of the consent conditions set out in his report. Having regard to the assessment by Mr Knox, I consider the effects on landscape values will be no*

more than minor if the proposed mitigation controls are adopted. I concur with Mr Knox's view that the elevation of the building platforms is a critical matter.

[125] The existing dwelling that was established via land use consent is still subject to landscape mitigation planting. There is no requirement for additional planting beyond what was required for the previous consent. A large portion of the planting that is yet to be planted will be located on proposed lot 2 and 3. This planting shall be incorporated into the planting plan or the applicants should apply for a variation application to remove this area of planting from the original decision.

[126] A submission in support of the application concurs with the landscape architects and applicants view that the proposed sites will have little to no visual impact or effect on the wider peninsula environment. Native planting and removal of pine trees will assist with positively enhancing the appearance of the area. The submitter supports the granting of this application as it will enhance property values for other properties from what appears to be a good use of unproductive land.

[127] Based on the assessment above I concur that the site is large enough to accommodate additional structures in relation to potential effects on the landscape management area.

Conflict and Reverse Sensitivity (Assessment Matter 6.7.15(ii) and 6.7.26)

[128] The proposed subdivision will result in two additional residential units on Rural Zoned Land. The two proposed building platforms are located close to existing Residential 1 Zoned land. Houses are an expected component of the rural areas, and residential activity and farming often co-exist very well. In this case, the rural land use is pastoral farming and is likely to continue there are currently no issues that have been identified in relation to conflict and reverse sensitivity with both residential and rural land located in close proximity. Any buildings associated with permitted farming activities on the site would need to comply with the bulk and location rules for permitted farm buildings.

Positive Effects

[129] The applicant identifies that planting of native vegetation on the site and the removal of some nuisance trees will enhance the amenity of the area and create positive effects. I concur with this statement.

Cumulative Effects (Assessment Matter 6.7.4)

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

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

[131] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.

[132] Two submitters raised concerns about the Cumulative Effects of the proposal submitting that this development will add to the lifestyle dwelling fragmentation of the upper slopes surrounding the Otago Harbour. It is contended that the proposal to create 2 hectare sites is repugnant and contrary to the plan.

[133] There is a potential that cumulative adverse effects will arise from this development on the rural character and sustainable use of the sites due to the fragmentation of rural land. There is also a cumulative effect of blurring the hard edge of lot sizes between the residential 1 zone and the rural zone. The adverse effects of the proposal in relation to landscape values can be mitigated but the use of the land cannot. The lot sizes are incongruous with the Rural Zone predominant land use patterns in this area and are well below the new density requirements of the 2GP. I consider that the cumulative effects of this subdivision will be more than minor.

Effects Assessment Conclusion

[134] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor in relation to the landscape effects but overall the proposed subdivision of small rural lots is considered to be more than minor in terms of its effects on loss of rural land and cumulative effect.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

[135] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

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

OBJECTIVES AND POLICIES ASSESSMENT

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

[137] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

Dunedin City District Plan (Operative Plan)

[138] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Rural Zone		
	<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 is contrary to this objective. The creation of two 2 hectare sites and the creation of an undersized 14.3 hectare site in this location do not promote the use of the land for primary production. The Operative District Plan

		describes land as the most important rural resource and its most significant long term use is primary production. Inappropriate use and development of land compromises the sustainable use of the land resource. In order to maintain and enhance the ability of rural resources to meet the needs of present and future generations, it will be necessary to ensure that the spread of residential activity into the rural areas of the City is carefully managed.
Policy 6.3.10	Protect areas that contain 'high class soils', as shown on District Plan Maps 75, 76 and 77, in a way which sustains the productive capacity of the land.	The proposal is consistent with this policy as no high class soils will be affected by the application as they will all be contained within the larger lot 3.
Objective 6.2.2 and Policy 6.3.5	Maintain and enhance the amenity values associated with the character of the rural area. 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.	The proposal is inconsistent with this objective and policy. The site is zoned Rural but the properties adjoining the land to the west are zoned Residential 1. Which has a current site density requirement of 1 residential unit per 500m ² of site area. Access to the site is via Gorman Street, Porterfield Street, and Wharfdale Street which are all sealed local roads with a residential street character. The close proximity of the site this Residential Zone does detract from the Rural Character which is usually associated with large areas of Rural Zoned Land. The Operative Plan suggests that some key elements of rural character include: • the predominance of natural features over human made features • the high ratio of open space relative to the built environment, • significant areas of vegetation in pasture, crops, forestry and indigenous vegetation, • presence of large numbers of farmed animals, • noises, smells and effects associated with the use of rural

		land for a wide range of agricultural, horticultural and forestry purposes, • low population densities relative to urban areas, • generally narrow unsealed roads, • absence of urban infrastructure. When viewed from the edge of the site and looking uphill the site and surrounds does contain some key elements described above. But when viewed from any other view point the site must be seen in the context of sitting adjacent to a long established urban environment. The character of the rural area is greatly influenced by the predominance of natural features and the productive use of the land. The retention of the amenity provided by this character, so close to the City centre, is a unique and essential element of Dunedin and is very sensitive to both the one-off and cumulative effects of residential and other urban activities. The impact is on both the immediate vicinity of the development and the wider erosion of the rural amenity Controlling density reduces the loss of openness, manages noise associated with residential activities and prevents buildings from dominating the environment. The impact of adverse effects on rural character and amenity values increases with the density of their occurrence. The restrictions on density will prevent adverse effects from a residential activity encroaching on neighbours and provides a buffer against the adverse effects of rural activities, reducing the potential for conflict. The proposal is inconsistent with this objective and policy as the site sizes do not align
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		with the minimum lot sizes in the Rural Zone but the new building platforms are designed so that they are located downhill close to the Residential Zone and therefore maintaining the majority of the open space and rural character further upslope.
Objective 6.2.3 and Policy 6.3.4	Provide for and locate rural residential development in a sustainable manner to avoid as much as practicable: Locations subject to potential natural hazards; or locations within Landscape Management Areas; Or areas that are identified on District Plan Maps 75, 76 and 77 as containing 'high class soils'; Or areas where development may result in adverse effects on the sustainable provision of infrastructure.	The application is not in a Rural Residential Zone but the proposal to create two 2 hectare sites fits the typical site size requirements for permitted Rural Residential zoned sites. The site is located in a hazard prone area and also within a landscape conservation area and therefore the operative plan did not promote Rural Residential style development in this area. The District Plan Controls Rural Residential Subdivision so that is undertaken in a way which minimises fragmentation of productive land and conflict with agricultural, horticultural and forestry activities. The proposal is contrary to this objective and policy.
Objective 6.2.4 and Policy 6.3.8 and Policy 6.3.9	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure. Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and on-site effluent disposal.	The existing dwelling is connected to the reticulated water supply. This connection is able to be retained. The application states that on-site servicing is proposed for domestic water supply and the disposal of stormwater and sewage. Access to the site is via existing legal vehicle access points from existing formed and sealed roads. The proposal is consistent with this objective and policies.
Objective 6.2.5 and Policy 6.3.12.	Avoid or minimise conflict between different land use activities in rural areas which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural	The minimum density requirements in both the Rural and Rural Residential Zones ensure that those who choose to live in the rural area will have a buffer from the adverse effects of neighbouring activities. The existing site already

	activities	adjoins residential development. Any conflict between the activities that can be carried out on the Rural Zoned land with neighbouring properties on the Residential Zoned land has been in effect for many years and forms part of the existing environment. The proposed subdivision is unlikely to increase any adverse effects on the wider environment from permitted farming activities, it is more likely to do the opposite by reducing the area of land adjacent to the Residential 1 Zoned land that is likely to be used for more noisy and smelly Rural Activities. The proposal is seen to be consistent with this objective and policy.
Objective 6.2.6	Maintain and enhance the life-supporting capacity of land and water resources.	There is no information provided in the application that would suggest that the proposed subdivision in its current form would limit the life-supporting capacity of land and water resources. However, reducing the size of rural land parcels limits the productive capacity and flexibility of use of rural zoned lots.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	Rural land in Dunedin is predominantly used for farming (including both agricultural and horticultural activities), forestry or conservation. All of these uses are reliant on large areas of open land and are generally protective of the soil and water resources of the City. They all make a significant contribution to the City and it is important that adequate provision is made for their continuation. The proposal is contrary to this policy as land fragmentation decreases the area of productive land held in single ownership.
Policy 6.3.2	Sustain the productive capacity of the Rural Zone by controlling the adverse	The presence of people living alongside farms, forests or tracts of conservation land can lead to

	effects of activities.	the expectation of changes to the existing amenity in the Rural Zone. Conflict arising from this can adversely affect production from, and in some circumstances the preservation of, the natural and physical resources of rural Dunedin. To minimise the impact on rural productivity, permitted activity for residential activities in the Rural Zone will require allotments with a minimum area of 15 ha. The tension between the Residential 1 Zone and Rural Zone makes it seem possible to further subdivide the Rural land adjoining the Residential Zone land to create some form of smaller block transition between the two. This approach does not sustain the productive capacity of the Rural Zone. The proposal is contrary to this policy.
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 fragmentation of rural land by residential activities decreases the versatility and productivity of the rural land resource and may adversely affect the ability of land resource to meet the needs of future generations. To achieve this the Council provides for residential activity at a higher density in the Rural Residential zone than in the wider Rural zone. The 2 ha minimum area for permitted activity status for residential activity within the Rural Residential zone is intended to enable some productive use of these sites for farming activities, while ensuring the character and amenity values anticipated in these areas can be maintained. The proposal to create two Rural Residential style lots and one marginal Rural Lot within the Rural Zoned land will be contrary to this policy.
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	Increased density of buildings, structures, shelterbelts and plantations in the rural area can adversely affect the openness and visual amenity of the rural environment. A minimum area of 15 ha in the Rural zone will

		avoid any adverse effects from a residential activity encroaching on neighbours in zones that enjoy an environment largely free from the adverse effects of people and their impact on amenity values. The proposal is contrary to this policy.
Policy 6.3.7	Recognise and maintain significant landscapes within the Rural Zone by limiting the density of development within Landscape Management Areas.	These landscapes are vulnerable to the adverse effects of increased building density. To minimise the impact of buildings and structures on these landscapes, the minimum area permitted for residential activities in Landscape Management Areas will be 15 ha. The site is within the Landscape Management Area and although the effects of buildings on landscape values are proposed to be mitigated the focus on this policy is on avoiding effects by limiting the overall building density. The proposal is contrary 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) landscape Management Areas or Areas of Significant Conservation Values. Irrespective of the ability of a site to mitigate adverse effects on the immediately surrounding environment.	Regardless of the ability of the adverse effects of development or subdivision to be mitigated on site it is appropriate to consider the wider, cumulative effects of activities. Greater residential density can affect amenity through an increase in buildings or even screening vegetation. The cumulative effects of increased residential density may contribute to a decreased sense of openness or privacy traditionally associated with more sparsely populated rural areas. It is important that subdivision and development does not set precedents in an area which can result in cumulative adverse effects. It is often not an individual development or the subdivision of an individual site which creates adverse effects on the rural character or amenity values, Landscape Management Areas or Areas of Significant Conservation, rather it is the cumulative effects of a number of sites being developed which create the changes.

		Consideration of the wider effects of activities on the surrounding rural area is therefore important to avoid cumulative effects. The proposal is contrary with this policy.
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Landscape Section		
	<u>Objective/Policy</u>	<u>Is the proposal Consistent with or Contrary to the Objective?</u>
Objective 14.2.1	Ensure that the City's outstanding natural features and landscapes are protected. Policy 14.3.1 Identify Dunedin's outstanding landscapes, and identify and protect their important characteristics (as listed in part 14.5.1 of this section).	The site is within the North West Peninsula Landscape Conservation Area. This area is to be conserved as it has a strongly defined landscape character. The proposed building platforms are located in a way that adverse effects can be mitigated in relation to landscape character and quality. The proposal is consistent with this objective.
Objective 14.2.3	Ensure that land use and development do not adversely affect the quality of the landscape.	Landscapes will change naturally over time. Human impacts on landscapes may occur in a positive or negative way. It is important that those significant aspects of a landscape's character are not adversely affected by land use activities and developments. The effects of a development need to be managed to achieve a harmony with the landscape. The proposed building platforms and proposed controls on development on these platforms will mitigate any potential adverse effect on the quality of the landscape. The proposal is seen to be consistent with this objective.
Objective 14.2.4	Encourage the maintenance and enhancement of the quality of Dunedin's landscape.	The proposed planting and existing planting required for the existing dwelling enhance the ecology and biodiversity of the landscape. The proposal in respect of landscape values is consistent with this objective.

Policy 14.3.3	Identify those characteristics which are generally important in maintaining landscape quality in the rural area (as listed in part 14.5.3 of this section) and ensure they are conserved.	• The visual dominance of natural landform and other natural elements such as remaining indigenous vegetation over cultural or human-made landscape elements, eg buildings or plantations. • The extent, integrity, coherence and natural character of the major natural elements such as landform, streams and areas of indigenous vegetation. • The extent and quality of views from the principal public routes and viewpoints • The natural characteristics of the higher rural land which: • contrast with the developed harbour edge settlements. This contrast remains a fundamental characteristic of the harbour landscape • ensure that the overall scale of these settlements does not grow to become too dominant in this small scale landscape • ensure that there is visual containment and separation of these settlements. • The extent and quality of the outstanding panoramic views which are possible both of the area and from the area. Overall the proposal is inconsistent with this policy. The proposal will blur the edge between the defined residential settlements and the rural zone.
Policy 14.3.4	Encourage development which integrates with the character of the landscape and enhances landscape quality.	Development and land use which is planned and designed to respect landscape values and character will enhance the quality of the landscape. Planning and design which take landscape considerations into account should be encouraged. The proposed building platforms sit low on the hillside and make the most of existing topography and surrounding vegetation to help mitigate visual effects. Especially from long distance views across the harbour. The proposal is consistent with this policy.

Subdivision Section		
	<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.	Subdivision activity must sustain the potential of the City's resources and provide for the reasonably foreseeable needs of land use activities of future generations in an efficient manner. Subdivision which jeopardises the potential for future development is contrary to the principles of sustainable management. The proposal is contrary to this objective.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	The design of a subdivision shall take into account the physical limitations of an area, including areas of instability, watercourses, vegetation and other topographical features. The proposal is 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 reasonably foreseeable uses of the land and water, the natural and physical attributes of these resources, and the constraints which they impose on the reasonably foreseeable uses, have been recognised by the zoning. It is essential that the design of a subdivision recognises these constraints and potential uses.
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.	Subdivision activities affect the City's natural, physical and heritage resources, as well as its communities. It is desirable that the adverse effects of subdivision activity and subsequent development are identified at the earliest stage (prior to subdivision consent) to enable appropriate measures to be taken to avoid, remedy or mitigate the adverse effects. The proposed undersized rural lots are contrary to this objective.
Objective 18.2.7 and Policy 18.3.7	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	The Council's role is to coordinate subdivision activities and land use activities in a manner that is sustainable for the City as a whole. The community will not be expected to fund the provision of infrastructure and management of adverse effects associated with subdivision and development. The existing dwelling relies on an existing water supply connection. Proposed residential activity will be self-sufficient in regards to water supply and

	sustained.	stormwater and effluent disposal. The proposal is consistent with this objective.
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.	Council has a duty to control the subdivision of land. It is the developer's responsibility to demonstrate that the land is suitable for subdivision. Land that is subject to physical limitations such as instability can be difficult to manage on a sustainable basis. Based on information provided by the Councils and Applicant's geotechnical advice the proposal is considered to be consistent with this policy.
Policy 18.3.6	Refuse consent to the subdivision of unsuitable land	Notwithstanding section 106 of the Act, should the Council be of the opinion that the land is unsuitable for subsequent use because of natural and/or technological hazards, the subdivision will be refused. Based on information provided by the Councils and Applicant's geotechnical advice the proposal is considered to be consistent with this policy.
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	Stormwater runoff and foul effluent discharge can adversely affect neighbouring land causing flooding, erosion and contamination of groundwater on adjacent properties. The subdivider is required to plan development so as to minimise and mitigate these adverse effects. The proposed lots are of a sufficient distance to avoid adverse effects on neighbouring properties. The lot sizes are large enough to establish an effluent disposal system that suits the soil type and topography so that ground water is not contaminated. There are no details of proposed soakage fields or potential effects on ground water. Based on limited information the proposal is inconsistent with this policy.

Hazards Section		
	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
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.	No earthworks have been applied for as part of this subdivision and land use proposal, but earthworks will be required to form the new building platforms and vehicle access on proposed lot 2 and 3, this will be assessed in a separate consent in the future if the earthworks rules are breached. The proposal is considered

Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	to be consistent with this objective and policies.
Policy 17.3.2	Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	

Transportation Section		
	<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 two additional lots and allow for two additional residential units. The proposed access to the site is acceptable to Council's Transport department. The proposed subdivision will have no real effect on the transportation network. 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.	

Environmental Issues Section		
	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 21.2.2	Ensure that noise associated with the development of resources and the carrying out of activities does not affected public health and amenity values.	Provided that only permitted activities take place and they do so within the noise limits set in the Operative District Plan the proposal will be consistent with this objective.
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and amenity.	The proposed development is consistent with these objectives and policies.

2GP Objective & Policy Analysis

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

Transportation		
	<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 efficiency of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	The proposed subdivision will not involve any extension to the existing roading network. The proposed lots have frontage to existing formed roads and access to the existing dwelling on Lot 1 from Gorman Street will be unchanged. The proposed access to Lots 2 and 3 to Porterfield Street will require some works to meet Council standards for access, but will not necessitate an upgrade of the existing public road. The additional traffic generated by these lots will not have an adverse effect on the existing roads, and is not expected to compromise parts (a) or (b) of this objective. As such, the proposal is considered to be consistent with this objective and policy 6.2.1.1.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	It is expected that the proposal will not hinder the operation, repair or maintenance of the roading network.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	For the reasons set out above the proposal is considered to be consistent with this objective and these policies.

Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	

Public Health and Safety		
	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The existing dwelling on Lot 1 is self-serviced except for water supply for which there is an authorised connection to the reticulated network. The proposed residential activity will be self-serviced in terms of water supply wastewater and stormwater disposal. The WWS Department is satisfied that the effects of serving can be managed through appropriate conditions of consent and requirements imposed at the time of building consent. The proposal will result in minimal demand on Council infrastructure. There is also no requirement to install any new infrastructure to be vested with Council. As such, the proposal is considered to be consistent with this objective.
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	Appropriate management of stormwater and wastewater will be overseen via conditions and the building consent process. Any on-site wastewater disposal system will need to be designed by an appropriately qualified person. Further, the WWS department has not raised any concerns in regard to wastewater disposal.
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.	Adequate water supply will also need to be available at all times for fire-fighting purposes. Provided all such systems are appropriately designed and managed, it is considered that the proposal is consistent with this objective and the policies.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	

Natural Environment		
	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 10.2.5	Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development and their values, as identified in Appendix A3, are maintained or enhanced.	The proposal incorporates measures to control and minimise the adverse effects on the values identified in Appendix A3, but the intensity of residential development may arguably represent inappropriate development in the environment of the site. Avoidance of the effects may be necessary to ensure the values are maintained or enhanced. As such, the proposal is considered to be inconsistent with this objective.
Policy 10.2.5.8	Require new buildings and structures, additions and alterations, and wind generators – on site energy generation in Outstanding Natural Landscapes (ONL) and Significant Natural Landscapes (SNL) overlay zones to have exterior colours and	The applicant has proposed mitigation measures designed to minimise the effects of residential development on the landscape. The placement of new buildings on the proposed building platforms, together with proposed controls on building design and appearance, and landscape planting will not avoid adverse visual effects caused by reflectivity, but may be expected to reduce the effects over time to a level that is no more

	materials that avoid or, if avoidance is not possible, minimise adverse visual effects caused by reflectivity.	than minor. However, giving the non-complying nature of the subdivision, this begs the question as to whether policy 10.2.5.8 is best served by the granting of consent, when it is possible to avoid the effect by declining the subdivision. Similarly, the effects on the landscape values identified in Appendix A3 can be mitigated by the proposed measures, but mitigation may not be sufficient to maintain these values.
Policy 10.2.5.11	Only allow subdivision activities in Outstanding Natural Features (ONF), Outstanding Natural Landscapes (ONL) and Significant Natural Landscapes (SNL) overlay zones where the subdivision is designed to ensure that any future land use or development will maintain the landscape values identified in Appendix A3 and will be in accordance with policies 10.2.5.1 - 10.2.5.9.	As such, the proposal is considered to be inconsistent with this objective

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.	There remains some uncertainty as to whether there is a land instability risk and if there is a risk, the level of mitigation necessary to ensure it is avoided or managed in the long term to an acceptable level, particularly in regard to the development of proposed Lot 3. Sufficient evidence has not been provided to date to demonstrate that the proposal is consistent with this objective. It is considered that the proposal is potentially inconsistent with the objective.
Policy 11.2.1.1	In the hazard 1 overlay zones avoid the establishment of: a) sensitive activities; and b) potentially sensitive activities that are not permitted in the underlying zone unless the risk from natural hazards is avoided, or is no more than low.	Part of the land is currently shown within a hazard 1 and 2 land instability overlay zone in the District Plan. The applicant has relied upon recommended changes to the maps which would have this overlay zone removed from the site. However, while these proposed changes are likely to occur (in the absence of expert evidence to the contrary) they currently have no status until decisions are issued on the relevant submissions to the Proposed District Plan. The applicant has provided information that supports the assessment that there may be no
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.	active risk of land instability, but Council engineering consultants have not indicated that this evidence is detailed enough to rule out the existence of any such risk, and the need for appropriate engineering design and mitigation measures to manage land instability.
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.	Residential activity is a sensitive land use activity and is limited to only one dwelling on the existing land title under the zoning provisions. Unless more definitive information is provided to demonstrate that land instability does not apply to the subject land or will not be exacerbated, it cannot be concluded that the risks to buildings are avoided or 'low'. The proposal is inconsistent with and potentially contrary to this policy.
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.	While the application indicates that minimal earthworks will be required for development of dwellings and associated buildings on Lots 2 and 3, this is dependent on whether future owners are prepared to limit their development to the identified platforms, and the design and construction of the buildings proposed. Geotechnical information has been provided as noted above, but there remains uncertainty about the extent to which any land instability risk exists, and the extent of measures sufficient to ensure any worsening of effects can be avoided with future development of the proposed lots. The proposal is therefore considered to be inconsistent with and potentially contrary to this policy.
Policy 11.2.1.16	Only allow earthworks - large scale in a land instability overlay zone where they will not have adverse effects on land instability nor create, exacerbate or transfer risk from natural hazards.	

Rural Zones		
	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 16.2.1	Rural zones are reserved for productive rural activities and the	The subdivision does not seek to preserve the Rural zone for productive rural activities, or enhance the natural environment. The

	protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	proposed housing is not associated with the rural productive worth of the land, and is in effect a managed expansion of the adjacent urban environment. The adverse effects on the productive potential are minor, and the effects of the natural environment can be mitigated by restrictions on the placement of buildings on the proposed lots, however, these effects will not be avoided. The values of the natural environment will therefore not be protected or enhanced. Accordingly, the proposal is considered to be contrary with this objective.
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 three significantly undersized Rural Hill Slope sites, from one existing undersized site. The new lots will not reflect the rural zoning and do 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.	The 2GP requires resultant sites within Rural Hill Slopes zone to have a minimum size of 25ha. As the subject site is less than 25ha all of the resultant sites will be well below this minimum site size. There are no surplus dwellings on the subject site. The existing situation with one property and one dwelling is somewhat close to the intensity of development anticipated by the Plan. Any subdivision resulting in additional sites is in direct conflict with the outcome sought by this policy. Consequently, I consider the proposal to be contrary to be 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	The proposed development is not expected to create conflict with rural activities because the residential activity will be located on western margin of the existing site adjoining the residential zone. Existing farming activity in this locality appears to be of limited intensity due to the terrain and lot sizes. The subdivision will result in development that is commensurate in amenity and character with the adjacent residential zoning, and is therefore unlikely to

	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.	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 for the existing dwelling on Lot 1 and the proposed dwelling on Lot 2 are commensurate with those for permitted residential activity in the rural zone. The dwelling site on Lot 3 comes to within 10m of the boundary of the residential zoned properties. However, there are existing farm buildings closer to the boundary and vegetation on the boundary, mitigating the extent to which any future dwelling will intrude on the residential amenity, plus the fact the development will be on the eastern uphill side of the adjacent residential properties, away from any harbour views enjoyed by the occupiers of these sites. One of these property owners has made a submission in support of the application. On the basis of the information provided, 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;	The proposed subdivision will intensify the density of residential development on the margin of the Rural Hill Slopes and Township and Settlement zones. This will be to the detriment of the values of the former zone. The overall effect may be small in scale, but does not contribute to the outcome sought by this objective. The proposed subdivision and resulting land usage will tip the balance from a predominance of natural features and a high ratio of open space to buildings, to an environment that is more in keeping with a rural residential or low density residential area. The residential activity of the new Lots 2 and 3 will not be associated with rural activity. The

	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.	proposal is therefore 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 by extending the urban edge into the open farmland. It will be visible from public viewpoints, with the adverse effects on rural amenity reduced but not avoided, if the location of buildings is restricted to the building platforms proposed. The proposal is considered to be contrary with these policies.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	
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 character and visual amenity of the rural zone. The proposal is contrary to this policy.
Objective 16.2.4.	The productivity of rural activities in the rural zones is maintained or enhanced.	The proposed subdivision will fragment an existing undersize Rural Hill Slopes site to create three sites each with residential activity. While the current rural productivity of the land may be limited, the proposal does little to maintain or enhance rural productivity on this site. The proposal is considered to be contrary with this objective and policy.
Policy 16.2.4.4	Avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural	

	activities.	
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[139] 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.

Overall Objectives and Policies Assessment

[140] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application **contrary** with many provisions relating to rural productivity, rural character and amenity in both plans due to the density of residential activity proposed.

Assessment of Regional Policy Statement and Plans

[141] 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. The operative RPS remains in force until the review is completed

[142] The proposal is considered to be inconsistent 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 inconsistent with the following relevant 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 3.1: Otago's natural resources are recognised, maintained and enhanced.*
- *Policy 3.1.7: Soil values.*
- *Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.*
- *Policy 3.2.17: Identifying significant soil.*
- *Policy 3.2.18: Managing significant soil.*
- *Objective 4.3: Infrastructure is managed and developed in a sustainable way.*
- *Policy 4.3.1: Managing infrastructure activities.*
- *Objective 5.3: Sufficient land is managed and protected for economic production;*
- *Policy 5.3.1: Rural activities.*

DECISION MAKING FRAMEWORK

PART II MATTERS

[143] 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 some inconsistency with Part II.

[144] 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)(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".

[145] With regard to Section 5(2)(a), it is considered that the proposed subdivision will not maintain the potential for rural use of the natural and physical land resource. It does not preserve the farmland in a single parcel but will fragment it between the three residential activities on what will become two small residential focused lots and one lifestyle farming lot.

[146] With regard to Section 5(2)(c), it is considered that the proposed subdivision and development will have adverse effects on rural productivity.

[147] With regard to Section 7(b), it is considered that the proposed subdivision will fragment Rural-zoned land into significantly undersized Rural-zone sites, and will not maintain the rural land resource

[148] With regard to Section 7(c), it is considered that the proposed subdivision and development of two additional residential units and associated earthworks and planting will have effects on the rural amenity values of the area, although the effects will be mitigated to a large extent, particularly if the dwellings are confined to the location of the proposed building platform.

[149] With regard to Section 7(f), it is considered that the proposed subdivision will change the quality of the environment by effectively extending the residential zone upslope degrading the rural character of the site, in conflict with the District Plan provisions.

[150] With regard to Section 7(g), it is considered that the Rural land resource is of finite character. The subdivision proposal seeks to fragment a complying Rural-zoned site (in the operative plan) into three undersized rural lots.

SECTION 104

[151] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. The environmental effects of the proposed development caused by the subdivision and development proposal will have more than minor adverse effects on the rural productivity of the land and runs the risk of blurring the urban/rural divide at this location which is currently a very distinct boundary. It will have less than minor effects in terms of visual effects.

[152] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. The proposal is considered to be contrary to the subdivision of rural land and rural land use objectives and

policies of both the operative and proposed plans and consistent with the other relevant sections of these plans. Overall, I consider the proposal to be **contrary** with the relevant objectives and policies of the District Plan and **contrary** to some key objectives and policies of the Proposed Plan.

[153] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [140] of this report it was concluded that the application is inconsistent with the bulk of the relevant objectives and policies of the Regional Policy Statement for Otago and the Proposed Regional Policy Statement for Otago.

[154] 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. 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."

[155] 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'.

[156] 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."

[157] 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."

[158] The Panel 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 commissioners deem 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."

[159] In terms of actually providing a 'true exception' argument for this proposal, the applicant cites Environment Court decision: *Protect Phia Heritage Soc Inc v Auckland RC A015/09* noted that RMA makes no reference to the integrity of planning instrument, precedent or to the coherence of and public confidence in the District Plan. While these are useful concepts that may be applied in appropriate cases, the Court stated that the need to apply them is less necessary where the plan provisions are effects based and the proposal does not generate effects which are more than minor.

[160] In the applicants view the proposal does not offend the effects-based policies of the District Plan and adverse effects are less than minor. The applicant concludes that overall the effects of the proposal are likely to be positive because of the amenity and ecological benefits that will be gained. The applicant notes that smaller sites are not unusual in this location and that the smaller sites proposed here act as a buffer to the more productive rural land further up the slopes, rather than being dispersed throughout the rural environment as is the case along Castlewood Road close to this application up slope.

[161] It appears that the applicant does consider that the proposed subdivision to be a true exception and relies on their effects based assessment to allow this non-complying activity. The applicant states that any precedent set by granting to this proposal would not be desirable and would not create difficulties for Council in administering the District Plan consistently. This statement may be true for the establishment of the dwellings within the landscape management area but it disregards adverse effects on the rural zone. There is nothing in particular about this site that sets it aside from the rest of complying rural sites in this area. The promotion of native planting, whilst will have positive ecological and environmental effects does not offset the fragmentation of rural land.

[162] I consider that any subdivision proposal which fragments an existing undersized Rural-zoned property into three small rural sites needs to have a strong true-exception element in order to avoid undermining the Operative and Proposed Plan. I am not convinced that this property has that true-exception argument. A submission opposing the application states that unless a 'true exception' is present sets a precedent and alters developer's expectations regarding the District Plan. The submitter contends this consent application follows a pattern of applications to breach District Plan rules for personal financial gain.

[163] The Proposed Plan rule for subdivision of rural land is in effect and is far more stringent than the current Plan's rules. This proposal is clearly outside the expectations of the Proposed Plan for the rural zones, and should the Committee be of a mind to grant consent, it needs to be careful that the granting of consent will not undermine the new rules.

Non complying status (s104D)

[164] 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.

[165] It is my opinion that the subdivision will have adverse effects which are more than minor in respect of fragmentation of rural land. The proposal is contrary with the objectives and policies of the District Plan and the objectives and policies of the Proposed Plan regarding rural subdivision and rural productive land. While the weighting of the two Plans currently lies with the operative District Plan, the provisions of the Proposed Plan regarding rural subdivision are in effect, and are much more restrictive in their intentions for Rural zoned land.

[166] In terms of the District Plan, I consider that the proposal will fail to meet the effects test of Section 104D, and will also fail to meet the objectives and policies test, and the should the Commissioners agree with my assessment would not in a position to consider the granting of consent. In terms of the Proposed Plan, the proposal will fail both tests, which would also not allow the Committee to grant consent. Section 104D requires the objectives and policies of both Plans to be considered, in which case, the proposal will fail the gateway tests.

RECOMMENDATION

[167] Having regard to the above assessment, I recommend that the application be declined.

Subdivision SUB-2017-74

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and Proposed Plan, the Dunedin City Council **declines** consent to the **non-complying** activity for the subdivision of the land legally described as Part Section 69 Block II Survey Order 6099 Otago Peninsula Survey District held in Computer Freehold Register OT 271/67 into three lots at 34 Gorman Street, Macandrew Bay.*

Land Use LUC-2017-407

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of new residential activity on under-sized Lot 1 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

Land Use LUC-2017-548

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of new residential activity on under-sized Lot 2 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

Land Use LUC-2017-555

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the

*District Plan and the Proposed Plan, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of new residential activity on under-sized Lot 3 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

REASONS FOR RECOMMENDATION

[168] It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of 34 Gorman Street will be more than minor for the following reasons:

1. The proposed subdivision will fragment a complying sized Rural-zoned lot (in the Operative Plan) into three undersized rural sites. The Proposed Plan minimum site size rule is in effect and sets minimum site size for the Rural Hill Slopes at 25.0ha. This proposal does not reflect the direction that the Proposed Plan seeks to take for rural land which is to keep in it large productive properties. In this case, the subject site is on the edge of the residential 1 zoned Macandrew Bay suburb, part of the site contains high class soils. It therefore has potential as productive land and has been associated with grazing in the past. The subdivision will create two 2 hectare sites which are unlikely to be used for farming purposes. It is not sustainable use of Dunedin's Rural Zoned land.
2. The proposed building platforms and proposed conditions of consent including native planting will reduce adverse effects on the landscape management area. However, the proposed subdivision creates three undersized sites that will have effects on rural character which are more than minor. Although the site has limited visibility from public viewpoints, it is noted that the urban/rural demarcation in this area between the Residential 1 Zone and the Rural Zone is very clear. The existing rural land resource remains in rural use. This subdivision will blur the boundary between residential 1 zone and the rural zone along the peninsula by introducing three undersized sites and two additional dwellings in this area. This has the potential to change the rural character of this area.
3. I consider proposed Lot 1 and 2 to be focused more on residential use and amenity planting rather than a small lifestyle farm blocks. The proposed subdivision could set a precedent for residential intensification of rural land in close proximity to urban settlements.
4. The Proposed Plan is subject to submissions and the new zoning, with its minimum site size, has not been finalised. While greater weight is to be given to the current District Plan, the Council needs to be careful of undermining the integrity of the Proposed Plan this early in the process. There are submissions both opposing and supporting the new minimum site sizes, so it cannot be assumed what the outcome may be as a result of the submission process.
5. The proposal is considered to be inconsistent with many of the objectives and policies of the District Plan relating to amenity and the mixing of land uses. It is contrary to those regarding of the District Plan and Proposed Plan the subdivision of Rural land and the maintenance of rural productive land. The subject site is currently a complying site in the Operative Plan and will be an undersized site in the proposed plan should the site size be increased to 25 hectares.
6. Overall, I consider that the proposal fails both branches of the Section 104D test of the Act when assessed against the provisions of both the District and

Proposed Plans. Accordingly, I consider that the panel are unable to consider granting consent.

Report prepared by:



Amy Young
Planner

14/02/2018

Date

Report checked by:



Campbell Thomson
Senior Planner

14/2/18

Date