

DECISION OF THE DUNEDIN CITY COUNCIL

RESOURCE MANAGEMENT ACT 1991

Applicant:	Dianne Reid
RM reference:	SUB-2016-90 and LUC-2016-459
Proposal:	Subdivision of land located at 505 Saddle Hill Road into 4 allotments for residential purposes, and a balance lot. Land use consent is also sought for the four residential allotments as all are below 15ha.
Location:	505 Saddle Hill Road, Dunedin
Legal Description:	Lot 1 DP 12954, Lots 2 and 3 DP 19043 and Lots 1 and 2 DP 19723, held together in CFR OT10C/237.
Zoning:	<u>Operative Dunedin City District Plan</u> Rural Zone Saddle Hill Landscape Conservation Area Hazards 11504 and 11589 – Land Stability (Land Movement) <u>Proposed District Plan</u> Rural – Coastal Wahi Tupuna Site 55 Hazard 2 – Land Instability.
Activity Status:	Non-Complying Activity
Notification:	3 November 2016
Commissioners:	Commissioner A Henderson and Councillors M Lord and J O'Malley
Date:	23 March 2017
Decision:	Consent is granted subject to conditions

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by Dianne Reid for the subdivision of land at 505 Saddle Hill Road, Dunedin, and land use consent to establish residential activity on four of the 5 allotments.

Council File: SUB-2016-90/LUC-2016-459

DECISION OF DUNEDIN CITY COUNCIL HEARINGS PANEL COMPRISING COMMISSIONER A HENDERSON AND COUNCILLORS M LORD AND J O'MALLEY, HEARING COMMISSIONERS APPOINTED PURSUANT TO SECTION 34A OF THE ACT

The Proposal

1. We have been given delegated authority to hear and determine the application made by Dianne Reid by the Dunedin City Council under section 34 of the Resource Management Act 1991 (the Act) and, if granted, to impose conditions of consent.
2. The application has been made by Dianne Reid to subdivide an existing property on Saddle Hill Road to create four residential allotments and a large balance lot that will contain a significant area of indigenous vegetation that is to be protected.
3. The property is described in Councils rates book data as 505 Saddle Hill Road, Saddle Hill (Valuation Number 27901-13900), and is legally described as Lot 1 DP 12954, Lots 2 and 3 DP 19043, Lots 1 and 2 DP 19273, contained in CFR OT10C/237.
4. A detailed description of the proposal was provided in Section 1.2 of the Resource Consent Application prepared by Cubitt Consulting Ltd. Key elements of the proposal are reproduced below:
 - Creation of four lots for residential purposes, as follows:
Lot 1 – 7,400m²;
Lot 2 – 4,800m²;
Lot 3 – 6,100m²; and
Lot 4 – 1.1 hectares.
 - Land use consent is also sought for residential activity on each of these allotments. Each allotment contains an identified building platform, within which all buildings, including accessory buildings, are to be located.
 - A further allotment (Lot 5) with an area of 9.4 hectares will be created from the balance of Lot 2 DP19043 and will be amalgamated with the residual area of the site, being Lot 1 DP 12954, Lot 3 DP19043, and Lots 1 and 2 DP 19273. The residual area will have an overall area of 80.6 hectares, and will contain the property's existing dwelling.
 - Design controls are proposed for all buildings, including a maximum height of 5 metres for all buildings, and a requirement for naturally weathered timber or local stone or otherwise in colours that do not contrast with the colours of the bushland setting. A light reflectivity value (LRV) of no greater than 15% is also proposed.

- Access to the building platforms will be from Saddle Hill Road, and the sites will be self-serviced in respect of water supply, effluent and stormwater disposal.
- Plantings will generally be confined to indigenous species, with no golden or variegated plants allowed. Pest plants identified in the Proposed District Plan (2GP), as well as Chilean Flame Creeper (*Tropaeolum speciosum*) are also prohibited in order to avoid weed invasion.
- A 6 metre wide strip of indigenous planting will be established adjacent to Saddle Hill Road, and will be managed to control weed plants and animal pests.
- A bush protection area is proposed over approximately 56 hectares of the balance title to ensure that the indigenous vegetation within it is protected and enhanced. The application indicated that a covenant in accordance with section 108(2)(d) of the Act would be created to enable the protection of the bush. It was clarified at the hearing that the covenant was intended to refer to a consent notice to be imposed on the newly created titles.
- A Pest and indigenous Vegetation Management Strategy is to be prepared to achieve a number of objectives, including the establishment of the process to protect and enhance the native vegetation, establishing a programme for the control of noxious weeds and the progressive removal of all pinus radiata trees within the area.

Site Description

5. A detailed description of the site and receiving environment within which the application sits is found in be found in section 1.1 of the application. No parties disputed the description of the site or receiving environment, and we are therefore content to rely upon these descriptions, noting that the descriptions accord with our impressions from our visit to the site and surrounding area.

Notification and Submissions

6. Notification of the application on 3 November 2016 drew six submissions to the proposal. Of these, four opposed the proposal, and two supported it. The submissions were summarised in detail in the section 42A report, and for convenience we reproduce this summary below.

Submitter	Support / Oppose	Reasons for submission	Wish to be heard?
Craig Werner	Oppose	• The land is in a LCA and SNL. It is visually prominent. • Proposed plan requires 40ha sites, but applicant proposed as small as 4800m². Preposterous. Strikes at integrity of Plan. • Main argument for subdivision is proximity to Rural Residential zone, but zone a kilometre south of address. • Claim that proposal will extend Rural Residential character along road lacks basis. • Southbound beyond proposed sites, the environment continues to be totally rural in appearance for kilometres. • 'Nearby' Rural Residential zone is at low elevation right along road whereas proposed sites are elevated. • While existing Rural Residential zone compromises the visual amenity of thousands of Taieri Plains residents, the	Yes.

		proposed residences will have a much greater impact. • Applicant admits adverse impact on 'natural character and rural amenity' but submitter disagrees that this will be 'minor'. • Second supporting argument is that mitigation measures 'will mitigate acceptably', and structures will not be 'unduly prominent and will integrated with its bushland setting.' • Weak mitigation factors same as put forward in the last decades. Committee to decide if structures blend into landscape. • Most unbiased observers will admit to having attention grabbed by structural intrusion into the natural setting. • Hillside location visible to thousands of Taieri residents; 'visually prominent' and as disruptive as the worst of development altering rural Taieri slopes, creating appearance of suburbia on the spread. • Applicants, already privileged to live in protected landscape, turning a 40ha site into 4800m² to 1.1ha lifestyle lots, some 40 times smaller than Proposed Plan proposes. • Requests that application be declined.	
Mark Anthony Walter	Support	• Submitter has lived on Saddle Hill for 30 years. Applicant is an upstanding member of community. • Applicant one of first to settle on Saddle Hill and brought electricity to the district. • Applicant has promoted growth in community, supporting others' subdivision and building plans. • Applicant looks to preserve the natural elements of the area by keeping native forest and fauna in place on her property. • Submitter thinks it is great the proposed plans intend to keep this aspect of the area intact. • No concerns about congestion arising from additional properties as already many properties in area. Four more will not make a difference. • Requests that the application be approved.	No.
David and Kerry Hiom	Oppose	• Subdivision into four lots is an overdevelopment of the area. • Land of subdivision undulates with valleys. Saddle Hill Road follows these contours. The building platforms have been placed ad hoc to accommodate flat sections above valley. • Lot sizes differ greatly to each other. Smaller size gives precedent of overbuilding on land. • Access points onto Saddle Hill Road are hazardous. Road has blind hills and hollows. • Regularly have speeding cars, trucks and cars going past. Submitter has had a near miss when exiting their paddock. Incident reported to police. • Accident occurred two years ago when driver from Brighton missed bend, ran off road into subject site, and lay there for a whole night	No.

		before being found. • Submitter has been battling the Council for five years to have speed restriction on this stretch of road. Traffic survey by Council shows that 15% of drivers speed between 110km/hr and 120km/hr. • Building platform of Lot 4 is too close to submitters' boundary. • Concerned for privacy as house has large side window facing site. Lot 4 building platform will have open views through submitters' land and onto decking at back of house. Invasion of privacy. • Recommended fencing (Mike Moore's report) is not substantial enough to screen submitters' privacy. • Eucalyptus trees which were present when submitters bought property need to remain as they act as a wind barrier for submitters. • Requests that the Committee: - Reduces subdivision to two lots. - Reduce subdivision to two lots with better positioned building platforms. - Reduce subdivision of two lots of equal size. - Reduce subdivision to two lots, two building platforms, two driveways with safe exits onto Saddle Hill Road. - Reduce subdivision to two lots, building platform positioned at Lot 3. - Reduce subdivision to lots, building positioned at Lot 3, and substantial fence to secure privacy on both sides. - Solid fencing to be erected at a height sufficient to screen both sides for privacy. - Assurance that eucalyptus trees will be safe.	
Dr James & Mrs Sandra Suttie	Oppose	• Non-complying subdivision, District Plan requires 15.0ha. District Plan was approved for good reason – to protect rural nature of area. Proposed development opposes this goal. • Portions of site may be subject to land instability risk. • Wahi Tupuna Site 55. Rural Coastal. Minimum site size of 40ha, and Lots 1 to 4 are less than 15.0ha. • Site access to easternmost lot (Lot 4) gives insufficient visibility for emerging vehicles. • Proposed stormwater disposal will flow onto adjacent properties on opposite side of road. • Site access for Lot 4 is down extremely steep gully. Not seen as practical, particularly as alternatives have even poorer road visibility. • Comparing subdivision to earlier development is irrelevant. Consented prior to District Plan rules. • Subdivision exacerbates rural land fragmentation. • Subdivision is a major, not minor extension of rural residential character. Significantly	Yes.

		alter character and amenity values of local landscape by four buildings, people, vehicles, domestic animals, stormwater and waste water is inevitable in otherwise uninhabited rural area. • No positive effect on rural amenity values. Indigenous vegetation can be protected without subdivision. • Stability issue needs to be assessed as there is a likely risk factor. • Sight distances are not appropriate. Road speed and traffic volume higher than presented. Significant road safety issue. • Stormwater directed to road would necessitate water moving uphill. Water will flow back onto proposed subdivision, or more likely the properties on the other side of the road. Unnecessary and unacceptable. Already flooding problems on Saddle Hill Road, and subdivision will greatly add to these issues. Moving stormwater from one side of a water shed to another is totally illogical. • Concern that there will be cumulative effects on landscape by facilitating further subdivisions in a land management area. • No indication as to how wastewater will be disposed of. No provision for septic tanks. Concern that all aspects of water disposal have not been considered by applicant. • Submitter disagrees that proposal will have no more than minor adverse effect. District Plan in place to protect rural amenity values by minimising residential activity. • Subdivision is contrary to framework of District Plan s104D. Major adverse activity, the remainder of section is invalid as a major adverse activity cannot be mitigated by any additional activity • Existing development was prior to 15.ha limit. • Requests that application be declined.	
Gary James Cooper & Helen Therese Ward	Oppose	• Subdivision is a non-complying activity. • Site is zoned Rural, within the Saddle Hill landscape conservation area, visually prominent area. • Lot sizes are too small to comply with District Plan. • Parts of land might be at risk of land instability. • Proposed building height restriction of 5m is too high, and will not benefit landscape. • Saddle Hill Road has suggested speed limit of 80km/hr. Estimate of 74km/hr is too low. Observations tell submitter than speeds in excess of 80km/hr are normal. • High number of large trucks from quarries, stock trucks, etc. should be considered. • Proposed driveways have extremely poor visibility. • Consultants have underestimated road speed, traffic flow, and driveways will cause	Yes.

		more traffic hazards. • Traffic volumes increase substantially at weekends and over holiday periods. A favourite route for car enthusiasts and motorbike planned rides. Campervans travelling to Brighton and Taieri Mouth increase as it is a scenic route. • Four more driveway accesses on this stretch of road would contributed to an already hazardous situation. • NZ Post will not allow submitters to have letter box at gateway of 430 Saddle Hill Road as road considered too dangerous. Nowhere for rural delivery vehicles to pull off road from either ends of hill or on blind brow of hill. • Large expanse of beautiful natural bush, should not be removed. Extensive birdlife including kereru, tui, bellbird, waxeye, fantail, goldfinch, yellow hammer, silver eye and crimson rosella, etc. • Removal of natural bush will destroy natural habitat of birds. • Removal of gorse only should be permitted. • Proposed changes to the natural character of landscape and natural amenity will be adverse, not minor. • Proposed stormwater disposal system is of huge concern. Saddle Hill Road has problems with flooding, subdivision will greatly add to issue. Concerned that all aspects of water disposal have not been considered adequately by applicant. • Proposal is a major, not minor, activity with detrimental effects on landscape. • Subdivision will significantly alter character and amenity of local landscape. • Four additional dwellings, out buildings, garaging, people, vehicles, domestic animals, septic and stormwater discharges are an inevitable increase in activity in an otherwise uninhabited rural area. • No positive effect on rural amenity values. • Four dwelling extend beyond the extent of rural residential landscape to a large, not small, extent, over a relatively small area. • Proposal non-complying; reference to existing properties is irrelevant.	
AD & SVM McLeary and Farry & Co Trustees Limited.	Support	• Full support for the application. • Requests that the application be granted	Not stated.

7. We address these matters, where relevant, in our assessment below.

Consultation and Written Approvals

8. No written approvals were provided with the application.

The Hearing

9. A hearing to consider the application was convened on 16 February 2017 in Dunedin. In attendance were:
- (a) The Applicant, Dianne Reid, represented by Ms Bridget Irving (Counsel);
 - (b) Council Officers, being Mrs Lianne Darby (s42A report author); Mrs Kirstyn Lindsay (senior planning advisor), Mr Barry Knox (landscape architect) and Mr Grant Fisher (transportation planner); and
 - (c) Mr Craig Werner and Mr Mark Walter (submitters).
10. We had the benefit of a section 42A report prepared by Council's planner, Mrs Darby. Based upon her assessment of the application, Mrs Darby concluded that the subdivision would have adverse transportation effects, and possibly geotechnical effects, which would be more than minor, but that the proposal was not contrary to the objectives and policies of either the District Plan or the Proposed Plan. On that basis, Mrs Darby considered that the subdivision and land use proposals meet one test of Section 104D, and that we were able to consider the granting of consent.
11. Mrs Darby recommended that the application be declined for reasons including the following, as expressed in the section 42A report:
- *The proposed subdivision will create four significantly undersized Rural-zoned lots more in keeping with rural-residential development. Even then, the proposed lots are undersized by the standards of the Rural Residential zone. The Rural-zone subdivision rules are not intended to create purely residential lots, and the proposed arrangement of Lots 1 to 4 is, in effect, ribbon development along the road edge. This has the potential to change the character of the Rural zone.*
 - *The five new sites will maintain the density of the District Plan in that the average size of the site will be greater than 15.0ha. However, the arrangement of the proposed housing is not reflective of a subdivision creating lots which meet minimum lot size. There is no open space, productive use, or rural amenity associated with the proposed housing, and it is not obvious that the density of development for the overall site is being respected.*
 - *Minimum lot size for the relevant Rural zone of the Proposed Plan would result in only two complying lots. The proposed density of development is therefore two and a half times that anticipated by the Proposed Plan. Although these rules are still subject to submissions, the Council sought to make these rules in effect from the date of notification of the Proposed Plan because of concerns with rural subdivision fragmenting the land and other associated matters. The new lots are not consistent with the direction the Proposed Plan is taking subdivision in this zone.*
 - *The applicant has not offered a 'no further subdivision' condition for the large site of proposed Lot 5 and the balance area. This is to have an area of over 80ha. The removal of the land of proposed Lots 1 to 4 from the subject site does not diminish the site's development potential (in terms of the zone rules for both the District Plan and the Proposed Plan) in any way. There is the risk that the applicant will repeat the whole exercise to subdivide, using exactly the same arguments. This can be addressed by Council imposing the 'no further subdivision' condition as part of the consent, but it is usually done in agreement with the applicant.*
 - *Council's Transport department has concerns about the visibility distances as measured from the locations of the proposed accessways to Lots 1 to 4. While the applicant's traffic expert considers at least two of the four accesses as being acceptable, Council's Transportation Planner is of the view that the operating speed of the road is faster than the applicant's consultant has determined. As such, Transport considers that none of the*

accessways are compliant with sight distance recommendations. This has serious implications for road safety.

- *While Council's Consulting Engineer, MWH, has no specific reason to question the global stability of the land of Lots 1 to 4, the land is steep as it falls away from the road, and the present vegetation cover means its suitability for building cannot be adequately assessed as part of this consent until it has been cleared. The question remains as to when, in relation to the granting of consent, this investigation should take place. MWH notes that this work should be undertaken at the time of preparing building platforms. This can be done as a s224(c) condition of consent, but this will mean that subdivision consent has been granted for an activity that cannot be given effect if the building sites prove to be unacceptable.*
- *The small sizing of Lots 1 to 4 means that they cannot be developed with residential dwellings unless two to four of the yard spaces for each lot are breached. While most of the proposed yard breaches will have effects confined to the subdivision itself and Saddle Hill Road, the proposed side yard breach of Lot 4 will impact on the neighbours of 405 Saddle Hill Road. The neighbours have submitted in opposition to the proposal, and have concerns about the proximity of a dwelling on Lot 4 close to their boundary. It is possible that the repositioning of Lot 4's building platform further west will place the building site on sloping ground less, or not, suitable for development.*
- *There is no true exception argument which would allow this application to proceed without creating an undesirable precedent for the Rural zone generally. Most rural properties have a reasonable length of road frontage, and many are adjacent to other zones. Similar arguments regarding the retention of farm land in one site, and the protection of vegetation, will apply to other large rural properties. Allowing property owners to subdivide a strip of residential sites at the roadside is no in accordance with the expectations of either the District Plan or Proposed Plan. The consequence of this could be a major change to the visual appearance and character the rural land.*
- *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 that these will be reduced as a result of the submission process*

Summary of Evidence Heard

12. Evidence for this hearing was pre-circulated, and the Applicant's experts all provided a verbal summary of their evidence at the hearing. We have read all of the material, and the following is a brief outline of the submissions and evidence presented. This summary does not detail everything that was advanced at the hearing, but captures the key elements of what we were told. The material generally reinforced the matters included in the application and submissions.

Applicant

13. **Ms Irving** provided legal submissions and addressed the following points:

- The expert evidence concludes that the proposal passes both limbs of the s104D gateway test.
- Although the residential lots are between 0.5 – 1.1 hectares in area, the proposed subdivision overall will not result in more dwellings than could be achieved if a subdivision complying with the 15ha required by the Operative District Plan.

- The subdivision has been designed to retain the native bush on the area of pasture within a contiguous block whilst nestling the new lots with the existing rural residential development on adjacent land. Conditions are proposed to protect and enhance the bush to ensure that pest species are removed and managed, and that stock are excluded to facilitate the regeneration of native bush.
- The issue of sightlines and access to the subdivision can be addressed by the conditions advanced by the applicant.
- The proposal achieves the objectives and policies of the relevant plans as it is a considered response to a site that possesses some unique characteristics that are 'deserving of an atypical response'.

14. **Ms Dianne Reid**, the Applicant, provided a short statement in which she identified that the land is largely unproductive, and would likely remain so even if the steep gullies and ridges were cleared and replaced by pasture. The land would be put to better use by enabling four families to live there.
15. **Mr Dave Guy** is a son of the Applicant and provided a short statement in which he highlighted that the purpose of the application was to make use of land that is not of great agricultural value. Enabling the subdivision will provide for the preservation of the native bush, which is of value not only for the native species living in the area but for current and future residents.
16. **Mr Mike Moore** considered that the buildings will have a low impact, and that the development is appropriate and will integrate with the landscape. The openness of the area will be maintained. He note that the landscape is not an outstanding natural landscape so section 6 of the Act did not apply. In response to a question, Mr Moore did not consider it necessary to define a ground level for the building platforms as that could potentially require more earthworks.
17. Mr Moore noted that the proposed lots are similar in scale to the rural residential sections adjacent to the site and is essentially a minor extension of the rural residential character into gorse covered area between Saddle Hill Road and the large area of regenerating indigenous forest. He noted that a comprehensive suite of conditions and mitigation measures are proposed to ensure there would be minimal adverse effects on the natural character and rural amenity of the area, and that the protection and management of the approximate 56ha of regenerating forest would be a significant positive effect arising from the application.
18. **Mr Kelvin Lloyd** spoke to his evidence, and noted that the pine trees and gorse on the site are the main issue. Fencing will protect the bush areas. He indicated that he had no issue with the felling of the pines, rather than the in situ poisoning that was originally imposed. Felling the trees will be productive, as once dead, the pine leaf litter will moisten and provide good compost, whereas poisoning could allow some toxins to enter the environment over time. He indicated that he was satisfied with the proposed conditions from an ecological management perspective, but considered that they should be time bound to assist with compliance monitoring.
19. **Mr Andy Carr** highlighted that the principal difference between his view and that of the Council was the operating speed environment. Mr Carr considered that the operating speed of the road was 70kmph, whereas Mr Fisher for the Council considered it was 80kmph. Mr Carr recommended that until additional data could be collected that clarified the existing speed environment, the vehicle crossing should be located such that at they met the sight distances required under the operating speeds that Mr Fisher considered occur on this section of road. He confirmed that under an 80kmph scenario, suitable distances can be achieved on Lots 1, 3 and 4, and in the case of Lot 2, a Right of Way via one of the neighbouring lots could be created.

20. Mr Carr also considered it appropriate to recognise that the operating speed may be lower, and recommended that specific provision be made to allow vehicle crossings in other locations subject to a specific assessment of vehicle speeds and the provision of sight distances that are appropriate to those speeds. Mr Carr considered that overall, the proposed subdivision could be supported from a road safety perspective.
21. **Mr Allan Cubitt** provided planning evidence and highlighted a number of points, including:
- The Saddle Hill landscape overlay is a 'Landscape Conservation Area' and is not an outstanding landscape in terms of section 6(b) of the Act. Only the top 300 – 400 metres of the property is within this area, and it is entirely feasible to create a subdivision on the site that would enable the construction of four dwellings on reasonably flat, clear land outside the LCA within the lower portion of the property. This would achieve the permitted 15ha density, which he noted was still the operative rule, although it would meet the minimum subdivision site standards of the proposed District Plan.
 - The Applicant is confident that the ground conditions on the site are favourable, and agreed that the need to determine ground conditions before building should rest with the developer. The Applicant therefore accepted the proposed conditions that the suitability of the ground from a geotechnical perspective be completed, and any works required undertaken prior to section 224(c) certification.
 - The site is well suited to the use proposed and will integrate well with the surrounding environment. He considered that overall the proposal will have positive effects given the nature of the receiving environment, the anticipated level of development under the Operative District Plan and the mitigation proposed. Mr Cubitt considered that the proposal passes through first gateway test of section 104D.
 - The proposal is not contrary to the objectives and policies of either the Operative or Proposed District Plan, and on that basis the proposal passes the second gateway test in section 104D.
22. Having addressed the statutory gateways in section 104D, Mr Cubitt considered the proposal in accordance with section 104(1)(b)(iv), and concluded that the proposal was appropriate when considered against the policy framework of the Operative Plan.

Submitters

23. **Mr Walter** spoke in support of the proposal, providing his perspective of a resident who has lived opposite the site for many years.
24. **Mr Werner** spoke to his submission, noting that his broad concern was the conversion of rural land to lifestyle activity. He considered it 'folly' to think that a combination of height, colours and other controls allow houses to fit within the setting of an area. The eye is drawn to houses.

Officers

25. **Mr Fisher** noted that he was satisfied with Mr Carr's proposed conditions, subject to minor wording issues. He confirmed that there were no outstanding concerns from a transportation point of view, and agreed that the speed on the road would be unlikely to exceed 80kmph, and supports the proposed evidence based approach to identifying an appropriate location for the access point for Lot 2.
26. **Mr Knox** confirmed that he agreed with Mr Moore's assessment. He noted that while he agreed with Mr Werner's general concerns regarding potential effects on rural areas, he did not agree that bulk and location controls are an inappropriate tool. He noted that while some rural subdivisions can be 'cookie cutter' subdivisions, this proposal retains the bulk of the site.

27. **Mrs Darby** noted that land use consent in some form was required, whether through a landscape building platform that required a further controlled consent, or the imposition of bulk and location controls through consent conditions. She considered that the no further subdivision conditions would need to be strongly worded so future interpretation would be clear. She also considered that undertaking a complying subdivision would be difficult to achieve and would not be practical. Mrs Darby also considered that the geotechnical suitability of the sites had not been determined. She considered that this could be subject to a section 224c condition but noted that this could result in a subdivision that could not be given effect to.
28. Overall Mrs Darby stood by her original position that consent should be declined, noting that creating four houses in the proposed location was not what the District Plan was about, although she acknowledged that it was a finely balanced application.

Applicant's Right of Reply

29. **Ms Irving** provided verbal comments, which included the following matters:
- The Applicant could subdivide the site into four complying lots, but it would be unwieldy. Larger 15ha lifestyle blocks are not desirable, and would make the management of the bush more complicated.
 - The Applicant also considered an alternative situation which would scatter houses throughout the site. This is a less desirable outcome. The proposed subdivision achieves the best result.
 - The resource consent process is to test the scenarios that do not fit the rules. It is possible to achieve the provisions in an alternative way.
 - The vegetation is significant from an ecological perspective, and its management will be achieved by the subdivision. Ms Irving clarified that the no further subdivision control and the bush protection condition will both be consent notice conditions.
 - The anchor for the assessment of the proposal is the effects. There is general agreement that they are minor and can be addressed through conditions of consent. It is a bizarre outcome to say that there is a rule that trumps this position.
 - The Applicant will provide a final draft of conditions. The geotechnical and access matters can be addressed before titles issue.
 - Consent notice conditions will include bulk and location controls on future dwellings. No additional consent is necessary provided these controls are met.
 - The potential for a precedent can be overstated. The circumstances of the application need to be considered. The site has indigenous vegetation with significant value. It is reasonable for a consent to facilitate the wellbeing of the owner and to improve on the values of the site.
 - Finally, Ms Irving noted that the rules are triggers for assessment. She concluded that a subdivision based on the 15ha rule would have greater effects.

District Plan Provisions

30. The section 42A report provided a comprehensive breakdown of the resource consent requirements for the proposal. We agree with these and set out the relevant consent requirements below:

The Operative District Plan

- Consent for a **non-complying** land use activity pursuant to Rule 6.5.7(i) as the proposal does not provide residential for activity at a density of one residential unit per site at a density of 15ha per site as required by Rule 6.5.2(iii).
- Consent for a **non-complying** subdivision activity pursuant to Rule 18.5.2 as the subdivision will create four sites smaller than 15ha.

Proposed District Plan

- Consent for a **non-complying** subdivision activity pursuant to Rule 16.7.4.3 as the proposed subdivision will fail to comply with Rule 16.7.4.1(a) which sets the minimum site size for the Rural – Coastal zone at 40.0ha.
- Consent for a **restricted discretionary** activity pursuant to Rule 10.4.3.3 for the removal of over 500m² of indigenous vegetation from the property.

31. We note that the Proposed Plan rules regarding minimum site size for Rural sites and vegetation clearance as set out above have been given immediate legal effect, and are applicable to this application, but are still subject to submissions. We note that all other relevant rules do not have legal effect and we have therefore not had regard to them.
32. We also note that consent was originally sought for landscape building platforms, but this part of the application was withdrawn by the Applicant on the basis that dwellings on the sites would be subject to development controls imposed through the conditions of consent and consent notices.
33. Overall, we agree that the application is required to be assessed as a **non-complying** activity.

Relevant Statutory Provisions

34. As a non-complying activity, this application must be considered in terms of Sections 104D, 104 and 104B of the RMA.
35. Subject to Part 2 of the RMA, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- a) any actual and potential effects on the environment of allowing the activity; and*
- b) any relevant provisions of:*
 - (i) A national environmental standards;*
 - (ii) Other regulations;*
 - (iii) a national policy statement*
 - (iv) a New Zealand coastal policy statement*
 - (v) a regional policy statement or proposed regional policy statement*
 - (vi) a plan or proposed plan; and*
- c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

36. Section 104D of the Act sets out the particular restrictions on non-complying activities, and states that

- (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –*
 - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*

(b) *the application is for an activity that will not be contrary to the objectives and policies of-*

- (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
- (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
- (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

37. Following assessment under Section 104D and section 104 (if the proposal passes through one of the gateway tests), the application must be considered under Section 104B of the RMA, which states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority –

- (a) *may grant or refuse the application; and*
- (b) *if it grants the application, may impose conditions under section 108.*

38. Section 220 empowers us to impose conditions on a subdivision consent.

39. In reaching this decision we note that we have taken into account all of the information provided with the application, the section 42A report and appended assessments, and the evidence presented at and subsequent to the hearing. We undertook a site visit on 15 February 2016 and are satisfied this enabled us to obtain a sufficient understanding of the site and surrounding environment. We have also considered the provisions of the relevant plans, and Part 2 of the Act.

Permitted baseline, existing environment and receiving environment

40. All subdivision and new buildings require resource consent in the Rural General Zone. As identified in the section 42A report, permitted activities in the Rural General zone are generally restricted to matters such as farming activities. We agree that there is no applicable permitted baseline for this application. We note, however, that the Applicant's position was that despite not satisfying the minimum subdivision area criteria in the Operative Plan, it did satisfy the overall density requirement of one dwelling per 15 hectares of site area.

Assessment

41. Planning evidence was provided by Mrs Darby for the Council via the section 42A report, and by Mr Cubitt for the Applicant. No other party provided expert planning evidence. We note that both planners agreed the proposal was not contrary to the objectives and policies of the relevant planning documents, thereby satisfying the second gateway test of section 104D. We also note that both planners largely agreed that the adverse effects of the proposal would not be more than minor.
42. As we understand Mrs Darby's position as expressed at the end of the hearing, she was concerned that the zoning cannot be disregarded, and could not reconcile the creation of four houses in this location as it was not an outcome the District Plan sought in the rural zone.
43. Mrs Darby considered that the proposed undersized lots are not what the District Plan or the Proposed Plan seek for the rural zones. She informed us that the 15ha minimum lot size for the District Plan was set by the Environment Court in November 2004, and the establishment of houses on undersized sites was also made a non-complying activity. She noted that smaller sites and a denser degree of residential development are not anticipated by the District Plan.

44. As we understand section 104D of the Act, the fact that an activity is non-complying is not an automatic veto of a granting of an application. The Act enables the consideration of non-complying activities and creates two gateways, one of which an application must pass through before being able to be considered on its merits. These two gateways are set out in section 104D and relate to the requirements that adverse effects be no more than minor (s104D(1)(a)) or that the proposal not be contrary to the provisions of a plan or proposed plan (s104D(1)(b)). Provided one of these gateways is passed, then we may move to consider the application on its merits and address the matters identified in section 104.
45. The section 42A report included a comprehensive assessment of the actual and potential effects of the proposal, as did Mr Cubitt's evidence. We note that both planners generally agreed that the adverse effects of the proposal were not more than minor, with the exception of Mrs Darby's view that there were adverse transportation and geotechnical effects as noted in the section 42A report.
46. We have reviewed the evidence and agree overall with Mr Cubitt's view that the two key issues in the determination of this proposal are the potential effects on amenity and landscape values. We further agree that once these issues have been determined, then matters of site suitability, such as geotechnical stability, servicing, transportation and earthworks become relevant.
47. Given that the landscape architects and planners largely agreed in respect of the effects of the proposal, in the following sections we provide our brief assessment of the proposal having considered the evidence provided. We have generally followed the order of the effects as they were addressed in Mr Cubitt's report.

Amenity

48. Having visited the site and considered the evidence of the various experts, we consider that there will be no more than minor adverse effects on the amenity of the site or surrounding area arising from the proposed subdivision and subsequent construction of dwellings within the proposed lots.
49. The proposed residential lots are on the southern side of Saddle Hill Road, and are opposite a number of rural residential lots. The proposed lots will have a similar character to these lots, as described by Mr Moore, and we agree that the residential lots will not appear as inconsistent with the established development in this part of Saddle Hill.
50. The proposed lots are set back from the Saddle Hill road reserve, and the topography of the site is such that from the road, generally only the roofs of the dwellings will be visible. The sites will not be visible from the Taieri Plain, being shielded by the topography that rises to the north away from Saddle Hill Road.
51. At present, the land between the road reserve and the dwelling sites is covered in gorse. As described in the evidence of Mr Moore, this is to be removed, and a strip of indigenous vegetation planted between the road and the dwellings to provide screening. This vegetation will assist in mitigating any visual effects of dwellings on these sites. In this regard we note that none of the landscape or planning experts considered that there would be adverse visual effects arising from the dwellings on the proposed lots. We also consider that the amendments made to the proposed setbacks will avoid any adverse effects on adjoining properties.
52. The conditions proposed by the Applicant included design control conditions that are intended to assist in absorbing the proposed developments into the landscape. We are satisfied that these conditions, which include controls on the colours and materials that may be used, are appropriate to enable dwellings to be absorbed into the landscape such that they will not give rise to adverse effects that are more than minor. We consider that the proposed controls on design and appearance, in tandem with the location of the dwellings, is such that they will not give rise to adverse visual effects from any of the public locations from which they can be viewed.

53. In addressing the amenity values of the proposal, Mr Cubitt noted that the proposal would better achieve the rural amenity outcomes sought by the District Plan than a subdivision that strictly complied with the 15 hectare minimum rule. We accept that there is no permitted baseline that can be applied in relation to subdivisions in the rural zone. However, in this case, we agree with Mr Cubitt for the following reasons:
- A complying subdivision where all the lots achieved the 15ha could be achieved on the site. However, this would result in the bush area being fragmented across a number of new titles which would make its ongoing management and enhancement difficult.
 - An overall density of 15ha per lot is achieved when the residential lots are considered in the context of the overall development, which includes the protection of some 56 hectares of indigenous vegetation in a bush protection area, and a portion of the site that is to remain as a grazed area.
 - Clustering the platforms close to the existing residential activities ensures the development is consistent with the character of the area.
 - A subdivision that achieved the 15ha minimum area would likely have buildings scattered throughout the site, requiring the removal of areas of bush and potentially significant earthworks to create platforms and access.
54. Overall, we are satisfied that the proposal will not give rise to any adverse amenity effects that are more than minor.

Landscape Effects

55. In considering the landscape effects, we agree that the site is not located within an outstanding natural landscape that would fall under section 6(b) of the Act. Rather, the site is located within a landscape conservation area, and as Mr Cubitt noted, this classification has been removed from much of this site in the Proposed District Plan.
56. The landscape effects were addressed in detail in the evidence of Mr Mike Moore. Mr Moore concluded overall that the proposal would enhance the quality of the landscape and would integrate with the existing character of development in the area. This would be achieved by the careful control of the development to nestle the buildings into a site that is dominated by bush, coupled with the protection of the indigenous first. He considered that the natural elements of the site would remain dominant, and the mitigation measures imposed, including design and appearance controls and requirements to protect indigenous vegetation, would ensure that any adverse effects on the skyline when viewed from the south would be negligible.
57. The Council's landscape expert, Mr Knox, agreed with Mr Moore's opinion. He considered that the proposal would not lead to adverse landscape effects that were more than minor provided the mitigation measures proposed as part of the development were implemented.
58. We also note that both Mr Cubitt and Mrs Darby agreed that the landscape effects would be minor, and that the proposed dwellings would have limited effects on the landscape. There was no expert evidence that provided a different opinion, and having considered the material available to us we are satisfied that there will be no more than minor adverse effects on the landscape.

Geotechnical Issues

59. The Applicant commissioned Mr J Lindquist to assess the stability of the proposed building sites, and the information provided in the application, and as confirmed in Mr Cubitt's evidence, was that he found no evidence of instability, and overall did not consider the site to be susceptible to instability. As there was no ground surface investigation undertaken as part of Mr Lindquist's assessment, his report recommended that subsoil conditions be assessed during

the preparation of the building platforms. Mrs Darby's concern with this approach, based upon the review of Council's consulting engineers, was that this could result in any remedial work being required to be undertaken by a new owner, and she considered it more appropriate that any such work be required to be completed prior to certification pursuant to section 224(c) of the Act.

60. We consider that this is an appropriate approach, and we note that Mr Cubitt's evidence agreed that this is a matter that should rest with the developer. We are satisfied that the conditions proposed requiring that the appropriateness of the sites for building, and any works required as a result of this assessment be determined and completed prior to the issue of section 224(c) certification, and avoids any potential uncertainty or additional cost being imposed on future lot owners.

Transportation

61. The principal transportation effects of concern at the hearing related to the sight distances for proposed Lot 2. The concern arose as a result of uncertainty about the operating speed environment, with Mr Carr considering it to be 70kmph, and Mr Fisher for the Council considering it to be 80kmph.
62. The proposed accesses for Lots 1, 3 and 4 comply with the required sight distances and neither transportation expert had any concerns regarding their suitability, and we agree.
63. The uncertainty regarding the speed environment arose in part due to the inability to complete appropriate speed surveys on the stretch of road access by the subdivision due in part to the low vehicle numbers using the road. In order to address this issue, Mr Carr proposed a condition that precluded a vehicle crossing onto Saddle Hill Road from Lot 2 apart from where it could be demonstrated that appropriate sight distances could be achieved based on the measured operating speed of the road. The proposed condition was accompanied by a note indicating that the operating speed shall be determined by an automatic traffic counter method placed in a location agreed between the Council and a suitably qualified professional.
64. Having considered this proposed condition, Mr Fisher advised at the hearing that he was satisfied with this approach, and confirmed that there were no other outstanding transportation matters raised that he and Mr Carr disagreed on. On the basis that the two transportation engineers agreed on the appropriateness of the condition, we are satisfied that it is sufficient to address the concerns relating to the location of Lot 2's access onto Saddle Hill Road. In the event that the traffic survey results are such that a suitable location cannot be found, we consider it appropriate to include the ability for access to Lot 2 to be taken across the access for one of the other lots, and protected by a Right of Way.

Positive Effects

65. The proposal will result in the ongoing protection, management and enhancement of approximately 56 ha of indigenous vegetation on the site. The evidence of Mr Lloyd discussed the significance of this bush area, and the threats it faces from invasive weeds and from grazing stock around the periphery. Mr Lloyd also addressed the improvements that removal of the pines and management would bring the site and wider area over time, a view shared by Mr Cubitt when he noted that without active management, the indigenous vegetation within the site would become degraded over time.
66. We note that the Applicant acknowledged that this benefit is not a direct consequence of the subdivision, as it could occur anyway. Mr Cubitt noted, however, that while the work could be undertaken without the need for the subdivision, in reality this does not generally occur due to the ongoing costs. The management regime proposed by the Applicant in this case would be costly and in Mr Cubitt's view, would not occur without the subdivision providing the capital.

67. Mr Cubitt also noted that the subdivision has been designed to ensure the majority of the vegetation is within one allotment to enable consistent management, and that this is a positive outcome. We agree in this instance, and note that were a subdivision that strictly provided 15ha per allotment proposed, it would be unlikely to result in the same degree of protection of the bush given the land fragmentation that would occur and the difficulties in managing a large area of bush that is divided by cadastral boundaries.
68. We agree that the protection of the large area of bush on the property is a positive outcome of the proposal. While we consider that it is always open to a land owner to undertake improvements to and management of vegetation on their property, we accept in this case that given the large area of vegetation involved, and the likely duration of the management regime proposed, it would be unlikely to proceed to the extent proposed unless the subdivision proceeded and capital was released to assist in funding the ongoing management.
69. Overall, we consider that the proposal will have significant positive effects, accruing primarily from the protection of the large areas of bush on the property.

Summary of Effects

70. Overall, having considered the evidence pre-circulated and presented at the hearing, the application and supporting reports, the submissions and the additional evidence provided subsequent to the hearing, we are satisfied that the adverse effects of the proposed activity will not be more than minor. On that basis, we consider that the proposal satisfies the first gateway test in section 104D.

Objectives and Policies of the Relevant District Plans

71. We have considered the detailed assessments of the objectives and policies of the relevant Plans as set out in the Application, the section 42A report and the evidence of the planning experts.
72. We agree with Mr Cubitt and Mrs Darby that the relevant sections of the Operative District Plan are the Sustainability, Rural Zones, Landscape, Hazards and Subdivision Chapters. Both planners undertook comprehensive assessments of the proposal against these provisions. Ultimately, neither found that the proposal was contrary to the relevant provisions, and that it therefore passed through the second gateway in section 104D(1)(b). We also note that there was no expert planning evidence that established a different position, and we accordingly accept the assessments of the planning experts. Rather than repeating them unnecessarily, we highlight the key issues below.
73. The Sustainability Chapter of the Plan (Chapter 4) is concerned, at a high level, with the sustainable management of infrastructure, the protection of natural and physical resources, and the maintenance and enhancement of the amenity values of the District. We are satisfied that the proposal will maintain amenity values, as the proposed residential dwellings will be appropriately located on the site so as to be consistent with the character of the surrounding area, and the protection of the large area of indigenous vegetation will maintain and over time enhance this vegetation. We agree with Mr Cubitt overall that the proposal is consistent with the provisions of the Sustainability Section.
74. The Rural section of the plan (Chapter 6) provides the policy framework for the rural areas of the district, based around a number of key themes including sustaining productive capacity, providing for rural residential development in appropriate locations, maintaining and enhancing rural amenity, and sustainably managing infrastructure.
75. We acknowledge that the primary tool the plan relies on to manage the effects of activities in the rural area is through the imposition of a 15 hectare minimum area. However, as noted by

Mr Cubitt, this approach does not fit all circumstances, and there are other ways of achieving sustainable management and the outcomes sought by the Plan.

76. Much of the site is not used for productive purposes. The area of bush is significant, and precludes this use. Part of the site is used for grazing and productive use, and the proposal will enable this use to continue, while also recognising the ongoing importance of the indigenous bush area in maintaining rural amenity. We do not consider that the proposal is contrary to the provisions relating to sustaining productive capacity, notably Objective 6.2.1 and its associated policies (6.3.1 – 6.3.3).
77. The proposed residential activities are located adjacent to established residential activities, and are a compatible activity with the immediately surrounding residential activities. We consider that the proposed residential sites are appropriately located so that any adverse effects can be absorbed into the landscape, and as such adverse effects on rural character and amenity are appropriately avoided, as required by policies such as 6.3.4.
78. All necessary services can be provided to the proposal. Overall we are satisfied that the proposal is not contrary to the objectives and policies relating to amenity values. We note that neither planner considered the proposal to be contrary to these provisions, and having considered the assessment set out in their evidence, we agree.
79. We agree that the site is not part of a section 6 landscape, and we are satisfied that the proposal is not contrary to the provisions of the landscape chapter (Chapter 14) of the plan. Both Mr Moore and Mr Knox agreed that there would not be adverse effects that were more than minor on the landscape values of the site and surrounding area, and we agree with this assessment.
80. The provisions of the plan relating to natural hazards (Chapter 17) require that the effects of hazards be avoided, remedied or mitigated. As identified in the assessment of effects above, the Applicant has agreed that the geotechnical suitability of the sites for building platforms will be confirmed and any works required completed prior to section 224(c) certification, and we agree this is appropriate. On this basis we consider that the proposal is consistent with the relevant provisions of the Hazards chapter of the Plan.
81. With respect to the Chapter 18 (Subdivision) provisions, we agree with Mr Cubitt in this instance that although the subdivision layout does not accord with the zone expectations (i.e. the 15 hectare minimum area), it better achieves the outcomes for the rural zone in this location given that a significant area of indigenous vegetation is to be protected and managed in the long term as a single area rather than fragmented in a subdivision that did satisfy the minimum area expectations.
82. Both Mrs Darby and Mr Cubitt addressed the proposed District Plan provisions, and both came to the view that the proposal is not contrary to its provisions. We have not placed significant weight on this plan, however, given that it is still proceeding through the hearing process and is subject to change. Significantly, as Mr Cubitt noted, the proposal is not considered contrary to the provisions of the proposed District Plan.
83. Overall, having considered the proposal in the context of the provisions of the Operative and Proposed District Plans, we are satisfied that the proposal is not contrary to the relevant provisions, and that the proposal satisfies the second gateway test in section 104D(1)(b).

Section 104 Assessment

84. Having determined that the proposal passes through the gateway tests in section 104D of the Act, we are able to consider the proposal on its merits under section 104(1). We consider that the proposal is appropriate for the following reasons when considered against the framework of the Operative District Plan, include those reasons advanced by Mr Cubitt:

- The site is not a productive farm, and is adjacent to existing rural residential development. The proposal will not impact on the productivity of the rural zone, but will enhance productivity of the existing indigenous vegetation;
- The site does not contain high class soils, and the indigenous vegetation on the site is to be protected and enhanced;
- The development can be absorbed into the landscape and will not give rise to adverse visual effects or adverse effects on rural character;
- The proposal provides the necessary services; and
- Overall the proposal better achieves the intent of the rural zone as opposed to a proposal that complied with the minimum area requirements.

85. Section 104(1)(b) requires us to have regard to any relevant regional policy statement or regional plan. We note that neither Mrs Darby nor Mr Cubitt considered the proposal to be inconsistent with the relevant objectives and policies of the Operative and proposed Regional Policy Statements for Otago, and we agree.
86. Section 104(1)(c) of the Act enables us to consider other matters such as precedent and plan integrity, a matter of concern in the section 42A report. We note that the granting of a resource consent has no strict precedent effect, although granting of a consent can create the expectation that like applications will be treated alike. In that respect we have considered whether the proposal can be considered a true exception, recognising that this is not a statutory test, but nonetheless is a matter that case law has identified as important when considering applications for non-complying activities.
87. Having considered this application, we are satisfied that it has sufficient distinguishing characteristics that set it apart from other applications, including:
- The proximity of established rural residential development immediately adjacent to the site that mean the proposed dwellings will not be out of character with the surrounding environment;
 - The fact that the proposed dwellings can be absorbed into the site such that they will not give rise to any significant adverse visual effects beyond the site; and
 - The protection of a large area of indigenous vegetation that would not be likely without the subdivision.
88. We consider that these factors combined set the application apart such that it can be considered an exception, noting that proximity to existing rural development on its own would not be a factor that would ordinarily allow a development to be distinguished.

Part 2 Matters

89. We do not consider it necessary to provide a detailed assessment of the proposal in accordance with Part 2 of the Act. We are satisfied that the relevant plans we have addressed above have been prepared in accordance with Part 2, and for the reasons set out in this decision, we consider the application is be consistent with relevant matters in Part 2 of the Act, and overall will achieve the purpose of the Act.

Determination

90. Consent is sought to subdivide land located at 505 Saddle Hill Road into 4 allotments for residential purposes, and to create a balance lot. Land use consent is also sought for the four residential allotments as all are below 15 hectares.
91. Overall, the activity was assessed as a non-complying activity under sections 104D, 104 and 104B of the Act.
92. The Act seeks to avoid, remedy and mitigate adverse effects associated with developments. We consider that the adverse effects of this application can be appropriately avoided, remedied

or mitigated, and that the proposal is consistent with the relevant objectives and policies of the Operative and Proposed District Plans, thereby satisfying the gateways tests in section 104D.

93. Accordingly, we determine that consent be granted pursuant to sections 104 and 104B of the Act subject to the attached conditions which are imposed under sections 108 and 220 of the Act.

94. Dated at Dunedin this 23rd day of March 2017.

A handwritten signature in blue ink, appearing to read 'A Henderson', is written over a faint rectangular stamp.

Andrew Henderson

For the Hearings Panel

Subdivision SUB-2016-90

That pursuant to section 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, and the District Plan and Proposed Plan, the Dunedin City Council **grants** consent to the **non-complying** activity for the subdivision of the land legally described as Lot 1 DP 12954, Lot 2 and 3 DP 19043, and Lot 1 and 2 DP 19273 (CFR OT10C/237) into five lots and balance area, at 505 Saddle Hill Road, Saddle Hill, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:

1. The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 19043,' dated 19 August 2016, and the accompanying information submitted as part of SUB-2016-90 received by Council on 23 September 2016, except where modified by the following:
2. Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:
 - a) If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.
 - b) That, if required in order to satisfy condition 3(g) below, a Right of Way over Lot 1 or 3 shall be duly created or reserved in favour of Lot 2, and shall be shown on the application plan in a Memorandum of Easements. The Right of Way shall have a minimum legal width of 4.0m.
 - c) That the following amalgamation condition shall be endorsed on the survey plan:

'That Lot 5 hereon and Lot 1 DP 12954, Lot 3 DP 19043 and Lots 1 and 2 DP 19273 (residue CFR OT10C/237) be held in the same computer freehold register (see CSN Request 1399938).'
3. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:
 - a) That geotechnical assessment shall be undertaken on Lots 1 to 4 to determine a suitable building platform for residential construction. The geotechnical investigation shall be restricted to areas outside of the yard setbacks defined in condition 3(c) below and the bush protection area shown on the Proposed Subdivision Concept Plan (Figure 9(a)) as attached to the Mike Moore Landscape Report. The geotechnical investigation shall be undertaken by an appropriately qualified person and shall:
 - Confirm by survey the actual topography and slopes of the area available for building on each lot.
 - Inspect the area available for building on each lot for features of global instability or weak foundation soils.
 - Undertake a site specific geotechnical assessment on ground slopes greater than 15°, to confirm that the site is suitably stable, and that the proposed construction or earthworks will not create or exacerbate any instability on this or adjacent properties. The report shall be submitted to rcmonitoring@dcc.govt.nz for approval by the Council.
 - b) If there are any ground remediation works required on the building platforms as a result of the investigations of condition 3(a) above, any

appropriate resource consents shall be sought, the works completed, and confirmed in writing as acceptable by an appropriately qualified person. The report shall be submitted to rcmonitoring@dcc.govt.nz and shall form part of the property record.

- c) *Plans showing the suitable geotechnical building area and yard setbacks of no less than 20m for the side yard setback and no less than 10m for the road setback shall be prepared for Lots 1 to 4. In the case of the building platform of Lot 4, the yard setback shall be a minimum of 40.0m from the eastern boundary shared with 405 Saddle Hill Road. The plans shall also identify the existing ground level (determined prior to earthworks) at the two corners of the building platform closest to Saddle Hill Road, and the position of the bush protection line within the lots as shown on Figure 9(a) of the Mike Moore Landscape Report. The plans shall be attached to the consent notices created by condition 3(i) below.*
- d) *Screen planting along the frontage of Lots 1 to 4 shall be undertaken using plants listed in the 'Screen Planting Specification' as attached to Mike Moore's landscape report Appendix B. The planting shall be within the property boundaries, shall be at least 6.0m wide and shall incorporate a variety of species including some canopy species to provide a screen of varied vegetation similar to natural native bush. Straight hedge plantings of single species shall be avoided. The vegetation screen shall extend across the full width of the site's frontage except for the accessway.*
- e) *The consent holder shall prepare plant lists of:*
- *'Recommended Indigenous Species' as attached to Mike Moore's landscape report Appendix A,*
 - *'Screen Planting Specification' as attached to Mike Moore's landscape report Appendix B,*
 - *Prohibited plants as listed in Appendix 10B of the Proposed Plan and including Chilean flame creeper (*Tropaeolum speciosum*).*

The lists shall be clearly labelled according to category, and shall be attached to the consent notices created by condition 3(i) below.

- f) *That a "Pest and Indigenous Vegetation Management Strategy" Plan shall be prepared for the management of the 'bush protection area' of each Lot. The Plan shall detail the actions to be undertaken by the property owner to:*
- *Establish processes to protect and enhance the indigenous vegetation in the area.*
 - *Undertake monitoring and control of noxious weeds, including pine species and wood weeds such as elder, hawthorn, and holly, to enhance native vegetation cover.*
 - *Progressively remove all the *pinus radiata* trees using methods appropriate for minimising the damage to surrounding native species, and the timeframe to carry out this work.*
 - *Stock shall be permanently excluded from all areas within the 'bush protection area' as shown on the attached plan.*
 - *'The vegetation within the 'bush protection area' shall be maintained and enhanced at the property owner's expense on*

an on-going basis in accordance with the attached "Pest and Indigenous Vegetation management Strategy" Plan.

The Plan shall be submitted to Council for approval. The approved Plan shall be attached to the consent notices of conditions 4(i) and 4(l) below.

- g) Vehicle crossings to Lots 1, 3 and 4 will be constructed to achieve sight distance in both directions of at least 114m except as provided below:.*
 - (i) Vehicle crossings for Lots 1 and 3 may be constructed in locations that achieve less than 114m sight distance in both directions where it can be demonstrated that appropriate sight distances are achieved based on the measured operating speed of the road determined by an automatic counter method, with the counter method located in a position to be determined by a suitably qualified professional in consultation with the Council's transportation engineer. Any vehicle crossing authorised by this condition shall be constructed in accordance with the approved plans.*
- h) Vehicle crossing location for Lot 2 shall be determined following an assessment of the operating speed of the road adjacent to the Lot. If acceptable sight distances cannot be achieved to provide access directly from Saddle Hill Road to Lot 2 access shall be provided via a right of way from Lot 1 or Lot 3, or Lot 2 may be deleted from the subdivision. The operating speed of the road shall be determined by an automatic traffic counter method, with the counter located in a position to be determined by a suitably qualified professional in consultation with the Council's transportation engineer.*
- i) That a consent notice shall be prepared for the registration on the titles of Lots 1 to 4 for the following on-going conditions:*
 - (i) All buildings, including accessory buildings, shall be located within the building platform as shown for this site on the attached plan. The building platform is identified for geotechnical and yard setback purposes only.*
 - (ii) All buildings on this site shall have a maximum height of 5m as measured from 'existing ground level' as shown on the attached plan.*
 - (iii) All buildings shall be finished in naturally weathered timber of locally appropriate stone, or in colours that have low levels of contrast with the colours of the bush land setting. Painted surfaces shall have light reflectively ratings of no more than 15%.*
 - (iv) All services shall be located below ground.*
 - (v) The driveway shall retain an informal rural character with soft edges (i.e. no kerbs). Monumental gates and driveway lighting are not permitted.*
 - (vi) Water tanks shall be sited and/or buried and/or screened (by plantings) so as to have minimal visual impact from beyond the property.*

- (vii) *Fencing shall be confined to a standard rural post and wire construction, or stone walls using locally appropriate rock.*
- (viii) *With the exception of plantings below 1.5m in mature height situated above the bush protection line, all plantings on the property shall be confined to indigenous species appropriate to the character of the site. No gold or variegated plants shall be planted anywhere on-site. Recommended indigenous species are listed on the attached plant list.*
- (ix) *The pest plans as shown on the attached list are prohibited, to avoid issues of ecological weed invasion.*
- (x) *The 6m wide strip of indigenous screen planting along the Saddle Hill Road frontage of the site (within the property) shall be maintained as screening in perpetuity. This area shall be managed to control weed plants and animal pests, and to encourage successful establishment of the planted species and natural regeneration of indigenous species on an on-going basis.*
- (xi) *That the area identified on the attached plan as being a 'bush protection area' shall be managed on an on-going basis in accordance with the attached "Pest and Indigenous Vegetation Management Strategy" Plan.*
- j) *A plan showing the 'Bush Protection Area' as identified by Figure 9 of Mike Moore's report shall be prepared and attached to the consent notice of condition 3(l) below.*
- k) *The fencing of the bush protection area shall be maintained with a permanent fence designed to exclude stock from the bush protection area.*
- l) *That a consent notice shall be prepared for registration on the title of Lot 5 (to be amalgamated with Lot 1 DP 12954, Lot 3 DP 19043 and Lots 1 and 2 DP 19273) for the following on-going conditions:*
 - i) *That the area identified on the attached plan as being a 'bush protection area' shall be managed on an on-going basis in accordance with the attached "Pest and Indigenous Vegetation Management Strategy" Plan.*
- (m) *That a consent notice shall be prepared for registration on the amalgamated title of Lot 5, Lot 1 DP 12954, Lot 3 DP 19043 and Lots 1 and 2 DP 19273 for the following on-going conditions:*
 - (i) *There shall be no further subdivision of this site, or separation of parcels pursuant to s226 of the Resource Management Act 1991, so as to create an additional site suitable for the establishment of a new residential activity. Likewise, there shall be no establishment of a second residential unit on the un-subdivided site. This restriction on subdivision and residential development seeks to maintain the overall density of residential development across the sites of CFRs ..., ..., ..., and ... at not more than one residential dwelling per 15.0ha in accordance with the rules of the Dunedin City District Plan.'*
- n) *The bush protection area shall be fenced with a permanent fence designed to exclude stock from the bush protection area.*

Land Use LUC-2016-459

That pursuant to section 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity for the clearance of indigenous vegetation (outside of the bush protection areas) and the establishment of residential activity with bulk and location breaches on Lots 1 to 4 SUB-2016-90 at 505 Saddle Hill Road, Saddle Hill, subject to conditions imposed under section 108 of the Act, as follows:

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 19043,' dated 19 August 2016, and the accompanying information submitted as part of LUC-2016-459 received by Council on 23 September 2016, except where modified by the following.*
2. *That only one residential unit shall be established on each of Lots 1 to 4.*
3. *That the dwelling for each Lot 1-4 shall be fully contained within the approved building platform as shown on the consent notice plan attached to the property title.*
4. *Removal of indigenous vegetation shall be limited to the approved building platforms and areas uphill of the platforms i.e. next to the road.*
5. *The vehicle access to each Lot shall be hard surfaced from the edge of the formed carriageway to a point at least 5.0m inside the property boundary.*
6. *Access to the new lots shall have a minimum width of 4.0m and a vertical clearance of not less than 4.0m high to ensure that the New Zealand Fire Service appliances have sufficient vehicular access to the property.*
7. *The new dwellings shall each have an adequate fire fighting water supply available at all times in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk to the property. This can be stored in underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1.0m above ground level) which can be accessed by an opening in the top of the tank so that couplings are not required.*
8. *A hardstand area shall be formed beside the tanks required in Condition 7 above so that a fire service appliance can park on it, if so required.*

Advice Notes:

- 1 In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.

- 5 This is a resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 6 Any vehicle access from the carriageway to the property boundary will be over road reserve and is to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Council's Transportation Operations Department).
- 7 Should any stormwater discharge from the site not connect to the Council's reticulated network, it is advised that the Otago Regional Council be consulted before works commence, to determine if the discharge of stormwater will enter any waterway and what level of treatment and/or discharge permit, if any, may be required.
- 8 It is advised that any lots to be amalgamated will need to be held in the same ownership and, prior to amalgamation, any existing joint home settlements will need to be cancelled or extended to incorporate the entire land area subject of the amalgamation action.
- 9 All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 10 This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of any new access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
- 11 The consent holder is to ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.
- 12 The following documentation is recommended as best practice guidelines for managing erosion and sediment –laden run-off and for the design and construction of erosion and sediment control measures for small sites:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
- 13 It is advised that in the event of any new development of the new lots, Transport will review the provisions for access and parking at the time of any building consent or resource consent application.
- 14 It is advised that any vehicle access from a road carriageway to the property boundary is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).