

29 March 2018

A C Charlton and A J Hamilton
C/- Cubitt Consulting Ltd
Attention: Allan Cubitt
4 Norfolk Street
Dunedin 9012

Dear Sir

RESOURCE CONSENT APPLICATION

**LUC-2017-401, LUC-2017-402 &
S240-2017-1,
1069 & 1075 HIGHCLIFF ROAD
DUNEDIN**

The above application for land use consent for residential activity at 1069 and 1075 Highcliff Road, Dunedin, and the related application for the cancellation of a section 240 covenant applying to the land subject of the resource consent application, was processed on a Publicly Notified basis in accordance with Section 95 and 95A of the Resource Management Act 1991. The Consent Hearings Committee, comprising Commissioner Andrew Noone (Chairperson), Councillor Andrew Whiley and Commissioner Ros Day-Cleavin, heard and considered the application at a hearing on 15 February 2018.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

A site visit was undertaken by the Hearings Committee on 14 February 2018 being the day before the hearing.

The Committee **declined** consent to the application on 16 March 2018. The full text of this decision commences below.

The time limit for the issue of this decision was extended pursuant to section 37A(4)(b)(i) of the Resource Management Act 1991. The issue of the decision could not be completed within the 15 working day time limit prescribed under section 115 of the Resource Management Act 1991 for the reasons noted in this decision.

The Hearing and Appearances

The applicants, A C Charlton and A J Hamilton, were represented by:

- Alison Charlton (Applicant),
- Allan Cubitt (Agent and spokesperson for applicant's case),
- Mike Moore (Landscape Architect for applicant).

Council staff attending were:

- Campbell Thomson (Advisor to Committee),
- Jeremy Grey (Processing Planner),
- Barry Knox (Landscape Architect),
- Wendy Collard (Governance Support Officer),
- Grant Fisher (Transportation Planner/Engineer).

Submitters in attendance were:

- Quentin Furlong,
- Lala Frazer on behalf of Save the Otago Peninsula Inc (STOP),
- Norcombe Barker,
- Hamish Forrester.

Procedural Issues

There were no procedural issues raised at the hearing. Commissioner Whiley advised of personal friendship with a submitter, but it was confirmed there was no conflict with his role on the panel.

Principal Issues of Contention

The principal issues of contention addressed at the hearing were:

- The effects on rural character and amenity values
- The consistency with the District Plan objectives and policies
- The potential precedent set by granting of consent
- The consequences for the integrity of the rural zoning provisions

Summary of Evidence

Introduction from Processing Planner

Mr Jeremy Grey spoke to a summary of his report, providing an overview of the proposal. He confirmed the land use consent sought was for the establishment of residential activity on the land at 1069 Highcliff Road and continuation of the existing residential activity at 1075 Highcliff Road. He noted the application also sought to facilitate the separate ownership of the two land titles involved by means of the cancellation of the s240 covenant.

Mr Grey confirmed the relevant provisions of the Operative and Proposed District Plans which the Committee needed to consider. He noted that the land is entirely zoned Rural under the Operative District Plan, but is split between the Hill Slopes and Peninsula Coast rural sub-zones under the Proposed District Plan. He advised that the land use is assessed, overall, as a non-complying activity under the Operative District Plan.

Mr Grey confirmed the number and scope of submissions received, and summarised his assessment of the proposal. He noted his conclusion that the actual and potential effects associated with the proposal will likely be no more than minor, provided appropriate mitigation measures are implemented and maintained, particularly in terms of landscape planting. He advised that in his opinion, the proposal is, overall, not contrary to the objectives and policies of the District Plan, but is generally inconsistent with the key objectives and policies of the Sustainability and Rural sections. He considered the two gateway tests of section 104D were therefore passed.

Mr Grey noted that a key consideration for the proposal was the issue of Plan integrity. He considered that the proposal has the potential to undermine the integrity of the Operative District Plan. He also indicated that the proposed cancellation of the s240 covenant was a critical matter, as separating the existing sites will result in areas that are significantly less than the 15 hectare minimum. Mr Grey recommended that the proposal be declined.

In response to questions from the Committee, Mr Grey clarified the extent of development permitted by the District Plan, and his analysis of the effects of the proposal. He noted that a farm shed would be permitted as an accessory building, provided it is situated within 50m of an existing building and the site meets the density rule. He confirmed that forestry was a permitted activity on the site. Mr Grey indicated he had no issues around design of the site development for the buildings and driveway, provided earthworks are managed appropriately and the landscape mitigation works proposed were implemented. He considered that the dwelling site is located quite a way from the Pukehiki settlement, and indicated that this isolation required an emphasis on the mitigation plantings.

The Applicant's Presentation

Mr Allan Cubitt presented the case for the applicant. In his opening statement he noted that the proposal was for a small dwelling on an 8ha site, and contended that the building site proposed was visually contained. In support of this he referred to the evidence of Mike Moore regarding the landscape setting, and noted that the development proposed was to be accompanied by significant landscape enhancement work. Mr Cubitt commented that the proposal would be an improvement to the site.

Mr Cubitt clarified the background to the present application advising that the previous application for this development was a land use application only, and had not dealt with the land covenant holding the existing titles together. He confirmed it was now proposed to cancel the covenant, but this was only to enable the property to be split between the existing owners, who both wished to remain on site. Mr Cubitt noted that the site at 1069 Highcliff Road where Ms Charlton wanted to build had been an independent property until the subdivision in 2005 of the adjacent land. This subdivision created the present land title at 1075 Highcliff Road from a larger farm property.

Mr Cubitt responded to arguments raised in submissions about the greater good and contended that the applicants' do not have to justify making an application. He observed that there were submitters who live on undersized lots. In his opinion, the effects of the proposal were not true environmental effects – with measureable adverse impacts – but subjective matters. With respect to the landscape effects he noted that two landscape architects have assessed the proposal and agree the effects can be mitigated.

Mr Cubitt introduced **Ms Alison Charlton** who spoke to her tabled evidence, and responded to a number of questions from the Committee about the land usage and environmental issues.

Ms Charlton confirmed the extent of existing farming activity being undertaken, with 10 alpacas and some sheep grazed on the property for their fleeces, in addition to the cattle being reared by Mr Hamilton at 1075 Highcliff Road. She indicated that she would like to increase the stock numbers of the alpacas with breeding to improve the fleece quality. However, she noted her time for farming activity was limited by job commitments.

Ms Charlton indicated she had chosen the proposed dwelling site because it was the least visible from neighbours and other sites. She wished to ensure her privacy and did not want to be close to other neighbours, while having some elevation. In regard to issues raised in submission about the change to the environment, she observed that there would be more light spillage at night from Pukehiki settlement, than from her dwelling. She noted that there had been only one new house at Pukehiki in her time there, being the dwelling at 20 Camp Road. Ms Charlton confirmed the calf rearing buildings on 1075 Highcliff Road had a separate

vehicle entrance from Highcliff Road, and that some work had been done to the existing farm track on 1069 Highcliff Road.

Mr Cubitt introduced **Mr Mike Moore** who spoke to his pre-circulated evidence, in particular the graphic supplement. Mr Moore commented on the location of the building platforms for the dwelling and shed and the proposed planting areas. He outlined his assessment of the landscape and visual effects, and reasons for concluding that the adverse effects of the proposal would be minor. He indicated that the proposed planting and development controls would mitigate these effects in time, and in the long term enhance natural character values.

Mr Moore responded to questions from the Committee about the building site selection, and the scope and detail of mitigation measures. He indicated that the building sites for the dwelling and shed were the most appropriate locations in the landscape setting for development on the property. Mr Moore considered that the design, scale and other controls on the form and appearance of the house would help mitigate the immediate visual effects until the plantings grow. He advised that form and colour of the building is important as well as the siting.

Mr Moore indicated that earthworks would be an adverse effect and it was important that mitigation planting be done quickly on the finished dwelling platform, such as re-grassing and the proposed planting close to the house. He advised that it was important to have a well thought out re-vegetation plan. Mr Moore considered that with the proposed planting the visual effects would be negligible after 10 years.

Mr Moore supported a condition regarding placement, colour and screening of the water tanks, as well as restrictions on the form and development of the driveway formation to ensure it has a rural character. He recommended the driveway follow the landform and have a gravel formation with soft edges, with appropriate plantings. He indicated that with the placement of the shed and proposed plantings around it, the visual effects of this building would be mitigated quickly.

In regard to the impact on the landscape setting, Mr Moore considered that while the proposed dwelling would not be seen as part of the Pukehiki settlement, the proposal would blend in with the rural environment around the settlement.

Mr Cubitt returned to his presentation and spoke to his pre-circulated evidence on the planning issues and statutory considerations. He commented on the permitted baseline effects with regard to the construction of the shed. While he did not think forestry would be a permitted activity due to the landscape overlay, Mr Thomson confirmed later that the rules for the relevant overlay did not exclude forestry. Mr Cubitt commented on the adverse effects this activity could have on the landscape effects.

Mr Cubitt referred to case law regarding environmental effects, and contended that a critical factor for the Committee's consideration is the existing environment. He considered that the proposed dwelling will be seen as part of the setting of the existing Pukehiki settlement, which he expected will probably not change. Mr Cubitt contended that the proposal will have no additional effects than are already there at this location, and is in keeping with the existing environment. He referred to the opinion of Mr Moore in support of this conclusion. He indicated that in his view concerns raised about lighting at night were overstated, as there is already light spill in the area at night and additional light from this proposal will be minimal. Mr Cubitt noted that land stability had been assessed by geotechnical consultants who did not have any concerns. He had no issues with the recommended engineering conditions.

Mr Cubitt contended that the proposed development will have positive effects on the receiving environment as a result of the proposed planting, particularly the additional planting proposed along the waterway within the site. He indicated that the proposal gets through the first Sec104D gateway test, due to these positive effects, with the adverse effects being minor and addressed by mitigation works. He considered that the District Plans needed to be considered holistically, and noted that both he and Mr Grey had both concluded the proposal was overall not contrary to the objectives and policies of the District Plans.

Mr Cubitt contended that rural character is not really changed by the proposal. While there are some rural amenity effects that may be unfavourable, he contended that rural productivity should not be seen just as farming, as the site is too small for economic farming activity. Mr Cubitt contended that the granting of consent to the proposal would not result in an undesirable precedent, as the adverse effects were minor, and the environmental context unusual, with no evidence of a capacity for further development of undersize sites in the vicinity.

Mr Cubitt offered to provide a set of draft conditions to the Committee and agree to extend timeframe for deliberations to assist the process. In response to questions from the Committee he noted that in regard to the assessment of landscape effects the only difference between the view of Mr Moore and Mr Knox was the timeframe for when effects would be mitigated by the proposed planting. He acknowledged in regard to precedent effects that Mr Grey had concerns that there are similar sites around the city. However, he disagreed with Mr Grey's conclusion and contended that the proposal needed to be looked at in context of the existing environment.

Reporting Officers' Evidence

Mr Barry Knox spoke to his technical memorandum, being an assessment for the Council of the landscape effects of the proposal. He summarised his advice and responded to questions from the Committee. Mr Knox confirmed his opinion of the point at which the effects would be no more than minor, and noted that it was important that the full suite of mitigation measures proposed be included in conditions of consent if granted. He recommended a management plan be required to ensure the curtilage plantings are implemented.

Mr Knox agreed with the comments of Mr Moore regarding the driveway to the dwelling site, and mitigating the visual effects of water tanks. He recommended that it would be useful for the water tanks to be partially buried and of a dark colour. Mr Knox considered that it would take between 7 and 10 years for the proposed planting to become prominent. In relation to the settlement of Pukehiki, Mr Knox considered that from a long view the dwelling would be seen as part of the cluster of houses at this locality, but not when you are closer. The proposed house would be the highest dwelling on Peggy's hill, and is a little detached from the Pukehiki settlement.

Later in the hearing process **Mr Grant Fisher** attended the hearing to answer questions from the Committee regarding the property access and proposed driveway. Mr Fisher indicated that the driveway location was the only relevant matter for his consideration. He advised that he had visited the site and was comfortable with the driveway location and on-site access proposed. Mr Fisher was satisfied that traffic sight lines were acceptable given the road and the speed of vehicles. He confirmed that the area of the road reserve fenced off may need to be changed with the new access, but this would be dealt with at the time of a building consent application.

Evidence of Submitters

Mrs Quentin Furlong spoke to the submission on behalf of herself and her husband. She noted that she had concerns regarding precedence, and commented on the original subdivision creating the present property subject of the application, noting that their property was not part of this subdivision. She expressed concern that the co-applicant, Mr Hamilton, was a real estate agent

Mrs Furlong spoke to her tabled photographs of the site and locality, commenting on the visibility of the dwelling site, and features including the siting of water tanks and the existing macrocarpa trees. She expressed concern about the need for screening and the reliance placed on vegetation to achieve this, and the extent of visual clutter from buildings on properties in the vicinity.

Mrs Furlong commented on the s240 covenant suggesting that the applicants would have been aware of this upon their purchase of the property. She did not accept that the proposed development of the property was an improvement to the environment, and noted that without the covenant the land could be on sold. She considered that the proposal would set a precedent and believed the 15ha rule should be upheld. In response to concerns raised by Mrs Furlong, Mr Thomson clarified a number of matters regarding the enforcement of conditions, the status of any use of the proposed building for tourism activity, and existing use rights.

Mrs Furlong responded to questions from the Committee regarding the extent of her property and vista, and planting proposed on the application site. She confirmed that her property included part of Peggy's Hill, with the visual outlook being out to Sandfly Bay. She suggested that if the proposed dwelling was built now the gorse would hide it from their property, but she remained concerned at future development and associated activities. She indicated that if imposed as conditions the building restrictions and proposed planting offered may alleviate concerns about visual effects.

Mrs Lala Frazer tabled and spoke to the submission on behalf of STOP. In her presentation she contended that the proposal is not a true exception and could not think of any conditions of consent that could make it one. She commented on a new tourism adventure promoting the night sky views from places including Peggy's Hill, and noted that this would be affected by the proposal. Mrs Frazer expressed concern at the effectiveness of conditions offered in regard to building scale and screen planting, and suggested that over time new owners would want to extend the dwelling or add further buildings, and remove planting blocking views. She considered that the environmental trade off sought could be achieved within the existing property, and submitted that the request to cancel the covenant be declined

In response to questions from the Committee she advised that the land subject of the conservation covenant is fenced, and that STOP had helped with the cost and been involved in regards to pest control. She confirmed the extent of the outstanding landscape area.

Mr Norcombe Barker spoke to the submissions by himself and on behalf of Larnach Castle, and provided a background to the Castle business. He noted that the business markets itself on the views of the Peninsula, and that he was on the board of the Wildlife Festival Trust.

Mr Barker considered that the application is a subdivision and the release of the s240 covenant would be creating two lots. He commented on the 2005 subdivision and contended that the cancellation of the 240 covenant would undermine this consent and raise concerns of precedence. Mr Barker expressed concern at the practical effect of the proposal on the environment, and the underpinning of the rural activity. He considered that it would lead to an erosion of the rural views of the Peninsula, and compared the situation to Central Otago. He emphasised that his concerns were about the clutter of buildings in the landscape and further urbanisation of the Peninsula, and requested that consent be declined.

In response to questions from the Committee, Mr Barker confirmed that the matter of plan integrity was his main concern and he noted changes over the last fifty years in the area of the site. In regard to the visual impact for tourists travelling along Highcliff Road, he referred to a photo showing Larnach Castle in a rural setting, and noted how over time there have been more and more homes established in the area.

Mr Hamish Forrester spoke to his submission, with particular reference to concerns regarding the precedence. He compared the situation with the application site to the circumstances of his own property at Sheppard Road, which included a number of titles which are linked together by a s240 covenant. He indicated that if consent is granted he would expect to have the ability to remove the covenant on his property, which also included an area of protected vegetation. Mr Forrester also commented on alternative mitigation measures he had used to reduce the visibility of a dwelling. Further, he suggested that Mr Cubitt had given evidence at a hearing on another consent application at Cape Saunders Road, that contradicted his presentation for the present application.

Mr Forrester referred to a number of Court decisions, including the case law cited by Mr Cubitt. He commented on the statutory considerations, and drew attention to comments in decisions about the issue of plan integrity. He took issue with comments about a site being somewhat unique, and considered that it is either unique or not. He commented on the character of the Peninsula, noting it has small communities with surrounding rural properties, and considered that consent to the proposal could be used as precedent for the whole of the Peninsula. He referred to comments in the Environment Court decision *Dougherty vs Dunedin City Council*, in regard to the importance of treating like applications alike.

Processing Planner's Review of Recommendation

Mr Grey reviewed his recommendation in light of the evidence presented. He commented that he had sympathy for the applicants and accepted they have a genuine intent to remain on and improve the property. He indicated that building colour and landscape planting are very important for mitigation of the development, along with measures to reduce the visual impact of water tanks. However, he advised that he remained concerned with the effect on plan integrity. Mr Grey re-iterated comments in his report summary, noting in particular that the land parcels subject of this application were held together as a requirement of the 2005 subdivision to comply with the minimum site size requirement. He maintained his recommendation that consent be declined, and considered that in order to grant consent, the Committee needs to be satisfied there is something about the application that sets it apart.

Applicant's Right of Reply

Mr Cubitt reiterated the positive aspects of the application and commented on the issue of precedence. He noted that this matter was only relevant if there is an undesirable precedent, and that the likelihood of other applications arising is not an environmental effect. Mr Cubitt stood by his evidence on this matter, and commented that Mr Forrester's example of Cape Saunders Road is a completely different situation and environment. He emphasised that the similarity with other applications was not a matter the Committee have to consider.

Mr Cubitt indicated the key consideration was the environmental effects, which he considered are no more than minor in the existing environment of the site. He contended that the District Plan rule provisions do not allow for situations like the proposal as it is not the usual productive rural area. The proposal cannot be compared to other rural applications as the environment sets it apart.

In response to the submission of Mrs Furlong, Mr Cubitt contended that her property sits in a different visual catchment, and if subdivided would have a much greater effect. In relation to the photo evidence he disagreed with the interpretation about the visibility of the proposed dwelling, and compared the effects of permitted activities illustrated with the outcome promoted by the application. Mr Cubitt commented that one size does not fit all and the proposal shows this. He contended that the two titles were held together to allow the development across the road, and noted that the s240 request is not a subdivision. However, he noted that consent to this request is needed to enable the land use to proceed.

In regard to concerns about lighting at night, Mr Cubitt commented that the proposal is for a very small dwelling and conditions could cover the issue of light spill. He did not consider concerns about future owners removing screen planting were warranted, as the planting close to the dwelling could include plant species with a lower mature height, which would allow the dwelling to have a view without having to cut the vegetation. He noted that STOP does not have a legal right to enter the conservation covenant area, as access is only allowed by permission of the landowner.

Mr Cubitt clarified his contention that the site was not a rural area, commenting that the existing environment of the site is not the rural environment the District Plan is trying to deal with in the rule provisions. He noted by reference to subdivisions in the area that the 15ha minimum site size does not ensure the amenity outcome sought by the plan is achieved.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 5 Manawhenua, 6 Rural Zones, 14 Landscape, 17 Hazards and Earthworks, 20 Transportation, and 21 Environmental Issues. Regard was also given to the relevant provisions of the proposed Dunedin City District Plan. Consideration was also given to the Regional Policy Statement for Otago and Proposed Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions and the principal issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken the day before the hearing on 14 February 2018. The Committee inspected the site subject of the application, including the location of the building platforms proposed for a dwelling and shed. This enabled the Committee to have a clear understanding for its considerations of the physical reality of the site.

1) That, having taken into account:

- *the interests of any person who may be adversely affected by the time extension;*
- *the interests of the community in achieving an adequate assessment of the effects of the proposal;*
- *its duty under Section 21 to avoid reasonable delay*

the Council has, pursuant to section 37A(2)(a) and 37A(4)(b)(i) of the Resource Management Act 1991, extended the requirement outlined in section 115 regarding the time in which notification of a decision must be given after the hearing was completed.

*2) Pursuant to sections 34A(1), 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, to the provisions of the Operative Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non complying activity** being:*

- *LUC-2017-401 - the establishment of residential activity on the land at 1069 Highcliff Road, being Lot 2 DP306650 (CFR 25979OT368/120); and*
- *LUC-2017-402 - the continuation of existing residential activity on the land at 1075 Highcliff Road, being Lot 1 349575 (CFR 203124), as a site held*

independently of the land at 1069 Highcliff Road (i.e. without the limitation of covenant instrument 6470757.2).

- 3) *The Dunedin City Council refuses to agree to the request pursuant to section 240(4) of the Resource Management Act 1991 to cancel covenant instrument 6470757.2.*

Reasons for this Decision

1. The Committee noted that there are separate elements to land use consent LUC-2017-401 in terms of the rules of the operative District Plan, with the new dwelling at 1069 Highcliff Road being a non-complying activity under the zone rules, but a restricted discretionary activity under the landscape and earthwork rules. However, given the interrelated nature of the planning issues arising from this application, the request for the cancellation of the s240 covenant, and the consequential consent this proposal requires for the existing dwelling at 1075 Highcliff Road, the Committee assessed the proposal as a whole. The Committee therefore determined that the activity status for the land use consent activity should be bundled together, and accordingly be assessed as a non-complying activity. The request for the cancellation of the covenant was considered in conjunction with the land use decision.
2. The Committee were satisfied that location and design of the proposed dwelling and shed would enable an environmental outcome with limited visual effects, which could be mitigated to an acceptable level by the proposed landscape planting and other controls on site development. The Committee concurred with Mr Grey that the effectiveness of this landscape planting was crucial to a determination that the adverse effects of the proposal on the environment are no more than minor.
3. The Committee accepted the analysis of the objective and policies of the District Plans set out in the Section 42A report, and noted that the proposal was assessed as consistent or inconsistent with many objectives and policies of the Operative and Proposed Plans. However, the Committee also agreed with Mr Grey that the proposal was contrary to a number of key policy provisions relating to rural amenity values. This includes Policy 6.3.14 of the Operative District Plan and Policy 16.2.1.7 of the Proposed District Plan. The Committee was satisfied that the proposal is generally consistent with the relevant objectives and policies of the Regional Policy Statement and Proposed Regional Policy Statement for Otago. It agreed with Mr Grey that there is a degree of inconsistency with the provisions of Part II of the Resource Management Act 1991.
4. The Committee were not satisfied that the proposal is a true exception. Careful consideration was given by the Committee to all the evidence presented to determine if there were factors about the proposed development, subject site and environment, which would set the application apart from other potential applications in a robust and meaningful way. Having visited the site, the Committee recognised some unusual elements to the landform and aspect, and environmental benefits of landscape planting, given the proximity to the existing covenanted area. However, the Committee was not satisfied that these presented a compelling case in favour of the proposal. The Committee considered that many features of the site development could be replicated on other undersize rural sites in the vicinity of Pukehiki and wider rural area. Arguments about rural productivity could apply to numerous undersize rural properties. The Committee were encouraged by and mindful of the applicant's commitment to developing the property in sympathy with the environment of the site. However, the Committee concluded that personal factors raised as part of the applicant's case had little relevance to the statutory considerations.

5. The proximity of the site to Pukehiki was noted by the Committee, and the matter of whether the proposal would form part of an existing cluster of development was given particular consideration. The Committee noted that the residential zoned area at Pukehiki recognised and encompassed a distinct settlement, with limited provision for further development. The Committee examined the size and spatial distribution of rural zoned properties around Pukehiki referred to in evidence, as well as the elevation and separation of buildings. This indicated to the Committee there were many houses scattered along Highcliff Road and other roads, interspersed with other vacant sites, that could be considered part of this or similar clusters of development, in a similar manner to the proposal. Many would seem to have potential house sites which like the proposal are not readily visible close to the site, but visible from longer views.
6. The Committee considered that the cancellation of the s240 covenant was not appropriate as it would result in an outcome that was in direct conflict with the provisions of the operative District Plan. The purpose and effect of the covenant is to ensure the existing minimum site required by the operative District Plan is achieved, and remains relevant to the environmental outcome sought by the Plan. While the Committee have sympathy for the co-applicants desire to both remain on and develop the land with each party owning one of the two titles separately, the Committee recognise that in the long term this situation will eventually change. Once cancelled there is nothing to prevent either title being sold, and future owners may not have similar interest in environmental improvements.
7. Having regard to the above considerations, the Committee determined that there was a high risk that granting consent would create an undesirable precedent for further residential development on undersized rural zoned sites on the Otago Peninsula and wider rural areas of the City.
8. The Committee were mindful of the importance of minimum site size requirements as part of the Operative District Plan, particularly in relation to development of rural zoned land. It also recognised the consistency between the policy provisions of the Operative and Proposed Plans in relation to density of residential activity in rural zones. Given that the proposal diverges significantly from the density requirements for residential activity in the rural zone of the Operative Plan, the Committee consider that the proposal did represent a challenge to the integrity of the Operative District Plan, and could potentially prejudice the outcome of the submission process on Proposed District Plan.
9. The Committee agreed with the opinions of Mr Cubitt and Mr Grey that the proposal passes both branches of the Section 104D test of the Act. Accordingly, the Committee was able to consider the application on its merits. However, in exercising its discretion the Committee concluded that granting the consent sought would not be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.
10. The refusal of the consent sought was not an easy decision for the Committee, and deliberations took more than one meeting to ensure all evidence presented was evaluated thoroughly in the context of legal advice and relevant case law. The Committee was particularly mindful of the potential implications of their decision for other developments on rural zoned land. For this reason, and due to commitments of panel members with respect to other hearings being held in March, the 15 working day time limit could not be achieved.

Right of Appeal

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to Campbell Thomson, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Noone'.

Andrew Noone
Chair, Hearings Committee