

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 1 October 2017

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2018-63
LAND USE LUC-2018-347
90 OROKONUI ROAD
WAITATI

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 1 October 2018. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2. BACKGROUND TO APPLICATION

- [2] Resource consent SUB-2012-66, for the staged subdivision of the land at 62 Orokonui Road, Waitati was issued on 30 November 2012 with a ten year lapse period. The original site was the former Orokonui Hospital, situated on Lot 3 Deposited Plan 302886 and Section 89 Block I North Harbour & Blueskin Survey District (CFR 11110: 19.6250ha). The property has a number of former hospital buildings, many of which are now used as residential dwellings since the closing of the hospital. There is a wastewater treatment plant for the property situated on Section 89 Block I North Harbour and Blueskin Survey District.
- [3] The consenting history of the site is detailed in SUB-2012-66, and includes consents for a tavern, playcentre, residential units, and a holiday park. The tavern and playcentre have since closed, and the holiday park consent was never given effect. However, LUC-2012-351, issued at the same time as SUB-2012-66, reauthorised the tavern on proposed Lot 4 of the subdivision, therefore keeping this consent alive. Land use consent was issued at the same time for residential activity on the new lots, mostly within the existing buildings except for Lots 5 and 6 which were given consent for replacement buildings.
- [4] The District Plan requires the creation of an esplanade strip not more than 20.0m wide along the edge of the Orokonui Stream at the time of subdivision. This requirement was waived at the time of SUB-2012-66 by the Hearings Committee who noted in its decision dated 2 October 2012:

'The Committee considers that the determination of esplanade reserve or strip requirements is an aspect of the processing of subdivision consents along specified waterways, and that due process must be followed. Therefore, the fact that this waterway had previously had its esplanade reserve or strip requirements waived did not mean that it was unreasonable to revisit the issue as part of the next subdivision proposal.'

Furthermore, the Committee wished to retain the opportunity to revisit the matter of esplanades for this watercourse in the future as watercourses had the potential to change their nature in response to changes in ground water levels. Therefore, the waiving of the esplanade strip and reserve requirements was specific to Stages 1 and 2 of this subdivision proposal.'

- [5] Stage 1 of SUB-2012-66 was given effect, and titles for the new sites issued on 24 September 2013. The subject site of Stage 2 became Lot 2 Deposited Plan 463762, held in Computer Freehold Register 614425, and has an area of 7.7826ha. It is identified as 90 Orokonui Road.
- [6] Stage 2 of the subdivision was to create Lots 4 to 9. Lot 7 and 8 were to be amalgamated to form one site. The other lots were all to be separate sites.
- [7] The subdivision consent was then varied by SUB-2012-66/2/A, issued on 15 September 2016. The variation allowed for Lots 4, 5, 6, the amalgamated site of Lots 7 and 8, and Lot 9 of Stage 2 to be created independently of each other, and in any order. Regardless of which order the subdivision progresses, the intention was that Lot 4 be the last lot created. The stages were labelled Stage B to Stage E.
- [8] Land use consent, LUC-2012-351, (issued at the time of the original subdivision consent) addressed all the land use issues for the Stage 2 subdivision in one consent. However, with the lots of Stage 2 being separated into individual stages by SUB-2012-66/2/A, it was considered appropriate to also separate the various components of the land use consent. Rather than vary the consent, five new land use numbers were created. The original consent LUC-2012-351 is still relevant as it relates to Stage 1 (creating Lots 1 to 3 DP 462762). Stage 2 is to be superseded by LUC-2016-420 to LUC-2016-424.
- [9] Stage E of SUB-2012-66/2/A was completed on 24 November 2017 with the deposit of DP 506797. This created Lot 9 and the subject site of this consent, being the balance land. The completion of Stage E of the subdivision also gave effect to LUC-2016-424.

DESCRIPTION OF ACTIVITY

- [10] The applicant seeks to subdivide the balance land of Stage E into eleven lots in stages. The subject site is legally described as Lot 100 Deposited Plan 506797, held in Computer Freehold Register 768400, and has an area of 7.2334ha. It is occupied by a number of former hospital buildings, some of which have been converted to residential use. Much of the site is landscaped with gardens and pasture. Access to the site is from the end of Orokonui Road via right of way over 3 Chelivode Street.
- [11] The proposed lots will range in size from 2436m² to 1.79ha. They have been numbered in relation to the lots of SUB-2012-66/2/A as follows:
- Lot 4 will become Lots 41, 42, 43 and 44;
 - Lot 5 will become Lots 51, 52, and 53;
 - Lot 6 will become Lot 61 (with slightly different boundaries);
 - Lot 7 will become Lot 71 (this lot will not be amalgamated with any other parcel);
 - Lot 8 will become Lots 81 and 82.
- [12] The applicant seeks to have the subdivision consent structured so that any of the proposed lots can be created separately from the others, in any order. The new lots will be as follows:

- Lot 41 (1.79ha gross, 7715m² nett).
 - Lot 41 will include the central access serving all the other sites except Lots 44 and 53. This access is already subject to a right of way created at the time of DP 463762 (Stage 1 SUB-2012-66).
 - The existing building on proposed Lot 41 site is a hall/restaurant with an existing consent to operate as a tavern. It is currently used as a residential dwelling, but the applicant seeks to have land use consent issued for the continuation of a commercial activity (tavern).
 - Consent for residential activity is also sought.
 - A portion of the lot where asbestos has previously been buried is a HAIL site.
 - The application identifies a building platform around the existing building, and a second one (utility) around some accessory buildings. Future development will be constrained to the building platforms.
- Lot 42 (2355m²).
 - Lot 42 will be a triangular parcel containing the existing chapel. The chapel has kitchen and toilet facilities.
 - A 'no build' area is identified in front of the chapel, to protect its amenity.
- Lot 43 (6400m²).
 - Lot 43 will be an irregular shaped lot situated at the front entrance to the greater subdivision.
 - It is currently a vacant site, but has the ruins of a former hospital building in its southeast corner. The extreme southeast corner is identified as a HAIL site because of buried asbestos. It also has the listed oak tree in its northeast corner.
 - The greater portion of this lot is shown as a 'no-build' area in order to maintain the amenity of the site created by the sweeping lawn.
 - The proposed building platform is located in the southeast corner in the area of the existing ruins. The platform has been assessed by a geotechnical expert and is considered suitable for development.
 - Easements across the site are likely to need relocating in order to be clear of the proposed building site.
- Lot 44 (4725m²).
 - Lot 44 is situated at the northern (lower) end of the subject site. Access will be via its northern boundary onto the farm right of way.
 - There are two existing buildings on this lot: one is a dwelling and the second is a one-bedroom apartment located at the right of way edge.
 - Consent is sought for a private residential dwelling, either in the existing building or a new building, and a family flat within the apartment. The apartment will not be a standalone residential unit.
 - Lot 44 will contain a small portion of the HAIL site (asbestos burial) and a second HAIL site for an underground fuel tank near the apartment.
 - A no-build covenant area will apply to the northern portion of the lot.
 - An existing sewer line passes under the primary residence on this lot. If a new dwelling is to be constructed, the sewer can be relocated clear of any new building footprint. The easement is private and can be cancelled and recreated at the time of subdivision.
- Lot 51 (7475m²).
 - Lot 51 will be a vacant site situated approximately midway up, and to the north of, the shared driveway. The site is predominantly in pasture and scrub.
 - The proposed building platform is at the top of the lot, next to the existing access. It will occupy the flatter land at the upper end of the lot. A geotechnical

investigation has identified the building platform as being suitable for development.

- Lot 52 (7940m²).
 - Lot 52 is a vacant site next to the shared access. It has recently been cleared of pine except for a few remaining trees. The bulk of the proposed lot is pasture and scrub.
 - A proposed building platform is shown at the top end of the site, next to the access. The platform has been identified as favourable for development by a geotechnical expert.
- Lot 53 (1.07ha).
 - Lot 53 is at the lower end of the site, next to the right of way over 3 Chelivode Street.
 - There is an existing barn next to the right of way, and a derelict workshop/former house at the southeast corner.
 - It is expected that a new dwelling will be built on Lot 53, resulting in the demolition of the workshop/former house.
- Lot 61 (6595m²).
 - Lot 61 is a generally rectangular site with a number of existing buildings. It is more or less the same shape as Lot 6 SUB-2012-66/2/A but with a small portion of the present right of way.
 - The former therapy building on-site has been converted as a residential dwelling. The grounds are predominantly lawn and garden.
- Lot 71 (2435m²).
 - Lot 71 is on the opposite side of the shared driveway from all the other lots. It coincides with the former proposed Lot 7 SUB-2012-66/2/A which was to be amalgamated with Lot 8, but in this case, proposed Lot 71 is to be held in its own title.
 - Access will be via the shared access over Lot 41 which curves around the north, east and south sides of the lot.
 - There is an existing tennis court on-site which has been assessed as suitable for development by a geotechnical expert.
- Lot 81 (4005m²)
 - Lot 81 is an irregular shape to the east of the shared access.
 - There is a large single-storey dormitory on this land which is partially occupied as a residential dwelling. It is too large for a single residential use and it is likely that this building will be demolished.
 - A new residential dwelling, or modification of the existing building, will be constructed so as to have a residential unit on-site.
 - The balance of the site is in rough grass with a limited amount of amenity plantings along the western and southern sides.
- Lot 82 (4970m²)
 - Lot 82 will be generally 'L' shaped, and is situated at the upper end of the subject site, to the east of the shared access.
 - A building platform measuring 50.0m by 26.0m will control the position of any future building so that it is clear of easements. The building platform has been assessed by a geotechnical expert as being acceptable for development.
 - A small shed on-site will be removed as part of the s224(c) certification.

[13] The applicant intends to upgrade the existing buildings where viable, but also seeks to offer land and house packages for what is currently vacant land. By allowing the

subdivision to proceed in stages, in any order of lots, the applicant will respond to the market. Land use consent is sought for residential activity on each of the new lots, either in an existing building or a new residential dwelling.

- [14] The District Plan sets minimum yards for the Rural zone at 40.0m. The application seeks to have the yard spaces on the new lots reduced to 4.5m except where defined by a building platform as being greater. Existing buildings might have greater breaches (specifically, the chapel of Lot 42, the existing apartment and garaging on Lot 44, and the barn on Lot 53), but if these buildings are removed, the applicant states that there will be no existing use rights applying to these 'existing' breaches, and the 4.5m minimum yard spacing will apply to any new development.
- [15] The application also specifies that a height plane angle is to be set at 63° measured from existing ground level at the boundary. Maximum height of buildings is to be 9.0m, and maximum site coverage is to be 30%. Car-parking will be required on the new sites at a ratio of one car park for a dwelling with a gross floor area smaller than 150m², and two parks for a dwelling larger than 150m².
- [16] The existing access into the greater site is formed to a width of 5.5m and is hard surfaced. It has kerb and channel on both sides, and will have a legal corridor at least 8.0m wide. This standard of formation was approved under SUB-2012-66. The use of the access by more than twelve residential units requires consent. There are currently 27 legal or consented users of the access to the end of Orokonui Road, but only 15 likely actual users (the rest having alternative access). Six users in respect of lots of this subdivision are already consented under SUB-2012-66/2/A. This application will add another six users to the access.
- [17] The applicant has requested consent to subdivide a HAIL site. Consent for the change of use of a HAIL site will also be required in respect of Lot 43 which does not have an established residential activity, and the disturbance of soils insofar as is necessary to fulfil the requirements of the consent conditions regarding testing and remediation (if needed) of potential HAIL sites.
- [18] The District Plan requires the creation of an esplanade strip not more than 20.0m wide along the edge of the Orokonui Stream at the time of subdivision. This stream will pass through proposed Lots 51, 52 and 53. The applicant seeks to have this esplanade strip requirement waived.

3. ACTIVITY STATUS

- [19] Dunedin currently has two district plans: The Dunedin City District Plan and the Proposed Section Generation Dunedin City District Plan (the Proposed Plan). The Proposed Plan was notified on 26 September 2015 and is currently proceeding through the public process of becoming the operative plan. Until the rules of the Proposed Plan become operative, the current District Plan remains the operative plan. Where the rules of the Proposed Plan have been given effect, the provisions of both plans need to be considered.
- [20] Section 88A of the Resource Management Act 1991 states that the activity status of an application is determined at the time of lodging the consent. The activity status could, therefore, be determined by the current District Plan or the Proposed Plan, depending on which rules are operative at the time. Nevertheless, even if it is the current District Plan which determines the activity status of the application, any rules of a proposed plan that have been given effect must be considered during the assessment of the application pursuant to section 104(1)(b) of the Act.
- [21] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

- [22] The subject site is zoned **Rural** in the Dunedin City District Plan and there is an **Esplanade strip** requirement along a watercourse through the site. There is a listed tree **T887 – Quercus robur (Oak)** at the northern (lower) end of the subject site. The Hazards Register identifies the following hazards: **10106 – Land Movement**, **11407 – Liquefaction**, and **11749 – Contaminated Land**.

Subdivision Activity:

- [23] Rule 18.5.1(i) lists subdivision in the Rural zone as a restricted discretionary activity where the application complies with Rules 18.5.3 to 18.5.5, 18.5.9 and 18.5.10, and each resulting site is 15.0ha or greater. None of the proposed lots will have an area of 15.0ha or greater.
- [24] Rule 18.5.5 requires an esplanade strip of not more than 20.0m to be provided where land next to Orokonui Stream is subdivided into lots smaller than 4.0ha. An esplanade strip is therefore required within Lots 51, 52 and 53, and possibly 44. The applicant seeks to have no esplanade strips created.
- [25] For the above reasons, the proposed subdivision is considered to be a **non-complying** subdivision pursuant to Rule 18.5.2.

Land Use Activity:

- [26] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity for the Rural zone, provided that the minimum area of the site is not less than 15ha. None of the new lots will have more than 15.0ha of Rural zoned land and the residential activity of all new lots will be **non-complying** activities pursuant to Rule 6.5.7(i).
- [27] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to what the Plan anticipates as an acceptable use of the land. The residential lots will all be in the Rural zone, and will fail to comply with the following:
- Rule 6.5.3(i) requires residential buildings in the Rural zone to maintain 20.0m front yards and 40.0m side and rear yards. The applicant seeks to have yards reduced to 4.5m except where otherwise defined by building platforms or existing buildings. The residential activities therefore have the potential to breach the side and rear yard requirements by 15.5m, or more in respect of existing buildings.
 - Rule 6.5.4(iv)(d) requires access to comply with the Transportation Section. Rule 20.5.7(iv)(g) specifies that a private way must not have more than twelve users. The existing access to the subject site has 27 actual or consented users. This proposal will introduce another six residential units to the access.
- [28] The tavern is considered to be a commercial activity. Commercial activity is not listed as a permitted, controlled or discretionary activity, and is therefore a **non-complying** activity pursuant to Rule 6.5(i).

The Proposed Plan

- [29] The subject site is zoned **Rural – Coastal** in the Proposed Plan. The north and east of the site is within **Hazard 2 – Coast Flood** area, and the northern portion is part of an **Archaeological Alert Layer**. The northeast section has **High Class Soils**. The Proposed Plan as notified does **not** have an esplanade reserve or strip requirement along the subject watercourse.

Subdivision Activity:

- [30] Rule 16.3.5.1 specifies that subdivision is a restricted discretionary activity in the Rural zones, subject to compliance with the performance criteria. The proposed subdivision will fail to comply with Rule 16.7.4.1(g) which sets the minimum site size for the Rural – Coastal zone at 40.0ha. None of the lots created will have 40.0ha.
- [31] While the Rural Section rules of the Proposed Plan are subject to submissions, and therefore have yet to be finalised, Rule 16.7.4 (minimum site size for rural zones) and Rule 16.9.5.5 (assessment of subdivision performance standard contraventions – minimum site size) were given immediate legal effect pursuant to section 86D of the Resource Management Act 1991 at the time of notification. This direction was sought from the Court because the Council has significant concerns with the subdivision of rural land, and the potential consequences of development in anticipation of more restrictive rules for subdivision. Accordingly, the non-compliance of the subdivision proposal with Rule 16.7.4 results in an activity status of **non-complying** pursuant to Rule 16.7.4.3.

Land Use:

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

Land Use Activity:

- [33] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. Rule 16.5.2.1(g) specifies that the first residential activity on a rural site in the Rural – Coastal zone requires 15.0ha of land for it to be a permitted activity. All the proposed lots will have less than 15.0ha; therefore, residential activity for these sites is considered to be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.
- [34] Rule 16.3.3.32 lists commercial activities as being a non-complying activity in the Rural zones. The tavern is considered to be a non-complying activity. This rule is not in effect or operative.

Development Activity:

- [35] There are no actual building proposals for any of the new sites, but residential activity is anticipated on each of the new lots. Rule 16.3.4.5 lists the construction of new buildings greater than 60m² as being a permitted activity in the rural zones, subject to the performance standards.
- [36] Rule 16.6.11.1(a) of the Rural Section specifies that residential buildings are to maintain 20m setback from road boundaries, and 40m setback from neighbouring boundaries. None of the houses built on these lots will be able to maintain these setback distances. The new development is considered to be a restricted discretionary activity pursuant to Rule 16.3.2.13. This rule is not in effect or operative.

Overall Proposed Plan Status:

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

NES Soil Contamination Considerations:

- [38] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been

undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

- [39] A preliminary site investigation ("PSI") prepared by Tonkin & Taylor Ltd was submitted to Council on 14 November 2012 as part of SUB-2012-66. The report concluded that the bulk of the land has negligible potential for ground contamination, but there were areas of potential contamination resulting from previous land uses. The report recommended further investigation of localised areas, particularly around structures, as the subdivision and land use changes were not permitted activities.
- [40] Tonkin & Taylor Ltd identified the following sources of *possible* contamination relevant to this application:
- Buried asbestos products resulting from a building being demolished and buried within proposed Lots 41, 43 and 44. There is also an underground fuel tank on proposed Lot 44.
 - Fill containing lead contamination and building waste within proposed Lot 61.
 - Lead paint on existing buildings.
- [41] Given that the Tonkin & Taylor report identified a number of areas of interest within the property, but did not establish the levels of contamination, if any, nor the remediation or mitigation actions necessary to fulfil the requirements of the NES, the consent of SUB-2012-66 was processed as a discretionary subdivision. SUB-2012-66/2/A specified conditions of consent for each lot created by that subdivision, intending to address the NES matters.
- [42] The situation has not changed with this subdivision and land use proposal. Accordingly, the subdivision and land use changes are considered to be a **discretionary** activity pursuant to section 11 of the NES.

Summary

- [43] The application was lodged on 28 June 2018, after the close of submissions on the Proposed Plan. The residential and rural zone rules are subject to submissions and could change as a result of the subdivision process. However, Rule 16.7.4 (regarding minimum site size for the subdivision of Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules apply to the subdivision of Rural land but all other rules are not relevant to the subdivision or land use activity status of the application as determined at the time of lodgement.
- [44] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan, the Proposed Plan, and NES, and is considered to be a **non-complying** activity. The activity status of the residential activity for the new sites is determined by the Dunedin City District Plan and the NES, and is also considered to be a **non-complying** activity.
- [45] At the time of assessing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sites has been given effect, and is applicable to this application, but is subject to submissions. All other relevant rules are not in effect and are also subject to submissions. The rules for both subdivision and land use could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision application except for the minimum site size rule which needs to be weighted accordingly.

4. NOTIFICATION AND SUBMISSIONS

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

Person	Owner	Occupier	Address	Obtained
Chris and Carole Scott	✓	✓	80 Orokonui Road	27 June 2018
Elizabeth Knife		✓	90D Orokonui Road (Apartment 2)	24 June 2018
Ivy Scott		✓	90D Orokonui Road (Apartment 1)	24 June 2018
Jade Butson		✓	90D Orokonui Road	24 June 2018
Raymon Scott		✓	90 Orokonui Road (Lot 81)	27 June 2018

[47] As the proposal will result in additional users of the shared access, and there are already 28 actual or consented users already, the Council requested that the applicant provide written consent of all those legal users who had not already provided affected party approval. The applicant then requested that the application be limited notified. The following parties were notified:

- 58 Orokonui Road: Hendrik Jan Visser & Jaimee Visser.
- 60 Orokonui Road: Andrea Joy Newman, Michael Peter Stringer, & Grant Rae Trustee Ltd.
- 64 Orokonui Road: Paul Leslie Campion & Shirley Ann Zwies.
- 66 Orokonui Road: Russell Stuart Wall & Susan Alison Mary Wall.
- 66A Orokonui Road: Moira Joy Crossman.
- 68 Orokonui Road (eight flats):
 - Matthew Ian Lewis Isabel Caroline Smith (1) & (2)
 - Damian Rhys Bertanees, Donna Michele Miller (3)
 - Julien Robert Connell (4)
 - Quinta Wilson (5)
 - John Robertson Benthams (6)
 - Bonnie Fowler, Craig Michael Fowler (7)
 - John Robertson Benthams, Kay Marie Benthams (8)
- 3 Chelivode Street: Graeme Henry Bennett, Marie Patricia Bennett

[48] Two submissions have been received following notification, one in support and one in opposition to the proposal. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Hendrik Jan Visser (Jon)	Support	• Submitter totally supports the application. • Site zoned 'Rural' but used for non-farming activities for a long time (hospital and recreation). • Proposed subdivision is appropriate. • Site flanked by Orokonui Eco sanctuary and a DOC reserve. • Subdivision should protect amenity values of these above sites. • Concerned about effects on rubbish collection and litter at entrance to DOC car park, directly in front of submitter's property. • Already a large number of wheelie bins left at this location at all times. • Litter and visual pollution for the many visitors to the reserve. • Subdivision could increase the number of bins and recycling wheelie bins. • Requests that the Council and any rubbish or	No.

		recycling removal company be granted access to collect rubbish and recycling within the subdivision. • Wheelie bins, recycling containers and rubbish bags for the subdivision properties not be placed in front of the DOC reserve and 48 Orokonui Road.	
2. Graeme Henry Bennett	Oppose	• Submission is in respect to access to Lot 53 over Right of Way T937406.5 over the farm property of 3 Chelivode Street • Right of way access to Orokonui Road. • The proposed tavern. • The 12 bedroom apartment of Lot 44. • The submitter seeks to have the access to Lot 53 obtained through Lot 51. • The access at the base of the site, between the sewage ponds, is a critical farm access catering for tractors, stock trucks. Silage bales are stored on this part of the access. • Access sometimes muddy and unsuitable for residential traffic. • Right of way T937406.5 was created in 1986 with the Orokonui hospital was separated from the farm (farm was owned by Lands & Survey, Land Corp, and then G & M Bennett). • Right of way was not created for the purpose of providing residential access. • A tavern will exacerbate all current problems with the proposal as it stands. • Submitter's farm health and safety plan identifies right of way past sewage ponds as a hazard. Allowing residential use of this access only increases that hazard e.g. children riding bikes to school vs. farm machinery and truck on blind corner. • Requests Committee have access to Lot 53 amended to come in from top via Lot 51. • Requests all issues of right of way (ownership, upgrading, maintenance, and cost sharing) clearly identified at hearing. • Requests some matters discussed in relation to tavern. Should right of way be upgraded and vested in Council? • One bedroom apartment on Lot 44 is a safety hazard to the right of way. There is no set back from the right of way.	Yes.

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

- [50] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.
- [51] Neither the District Plan nor the Proposed Plan allows any subdivision to occur as of right. All subdivisions are either restricted discretionary activities where the proposal meets all District Plan requirements or non-complying activities where the proposal does not. Council rarely declines consent for proposals that create new sites meeting the minimum lot size, access, servicing and other requirements of the District Plan. In such cases, the subdivision consent is a means of ensuring to Council's satisfaction that all necessary subdivision matters, e.g. infrastructure, are adequately addressed, and is not an indication that Council is opposed to the subdivision.
- [52] In this case, the proposed subdivision is a non-complying activity under the rules of both the District Plan and Proposed Plan because of the undersized nature of the new lots. They reflect large residential or rural-residential lots, but are zoned Rural. No subdivision of this land into lots of the sizes proposed is anticipated under the rules of either Plan.
- [53] In regards to the proposed land use for the new lots, only the current operative District Plan rules are in effect or operative in respect of the zoning. The District Plan permits a single dwelling on a site provided the site is 15.0ha or larger. There is insufficient Rural-zoned land in all the proposed residential lots for a house to be established as a permitted activity. None of the proposed lots can be developed, or have the existing residential activity re-established on the smaller sites, as a permitted activity. Furthermore, the subject site is already an undersized Rural-zoned lot prior to subdivision, and no residential use of this land is considered to be a permitted activity.
- [54] The receiving environment is relevant to this proposal. The subject site is part of a former hospital, and hospital infrastructure including servicing, access, buildings, and landscaping is still in place. There are six actual or consented residential units already for the subject site.
- [55] The existing consent of SUB-2012-66/2/A facilitates the subdivision of the subject site (being the balance land of Stage E) into four new sites, each with residential activity approved by LUC-2016-420, LUC-2016-421, LUC-2016-422, or LUC-2016-423. In the case of proposed Lot 4 SUB-2012-66/2/A, the consent provides for two residential units and a family flat.
- [56] There are two existing consents for the tavern. RM 953558, issued 19 December 1995, and RM960462, issued 16 August 1996. It is understood that these consents were given effect although no tavern has operated from the subject site for some while. However, as the consents have been given effect, the tavern could re-establish at any time. LUC-2016-420 provides for the tavern to operate on proposed Lot 4 of SUB-2012-66/2/A.
- [57] In summary, there is no permitted baseline to apply for subdivision, although it is likely a restricted discretionary subdivision proposal would be granted consent on a non-notified basis. There is no possible subdivision for this land which would be a restricted discretionary activity. Resource consent is required for the establishment of residential activity on the new lots because the lots are undersized, but there are

already six actual or consented residential units in place currently. There is also consent for the former tavern to operate on Lot 4 of SUB-2012-66/2/A

[58] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7, 17.8, 18.6.1, and 20.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan:

- Lot Size and Dimensions
- Easements & Encumbrances
- Esplanade Strips
- Infrastructure
- Hazards
- NES Matters
- Earthworks
- Building Platforms and Bulk and Location
- Residential Units and High Class Soils
- Transportation
- Archaeological Sites
- Physical Limitations
- Amenity Values
- Conflict and Reverse Sensitivity
- Cumulative Effects
- Sustainability

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

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

[60] This subdivision proposal seeks to subdivide the balance land of SUB-2012-66/2/A Stage E into eleven lots. The lots will range in size from 2360m² to 1.79ha, and all will obtain access from the end of Orokonui Road via right of way over 3 Chelivode Street. As such, none of the new lots will have frontage to legal road, although all will have legal and physical access.

[61] Minimum site size for the Rural zone in the District Plan is 15.0ha, and in the Rural-Coastal zone of the Proposed Plan is 40.0ha. The new lots are therefore all significantly undersized. The subject site itself is already undersized, at 7.2334ha, and there is an existing consent to subdivide it into four new sites of 6220m² to 2.8ha. The land is not currently rural farm land, and any intention of maintaining large sites suitable for agricultural purposes has already been negated by the past use of the site and the existing subdivision consent.

[62] The proposed lots of SUB-2012-66/2/A are, in effect, large lot residential sites with no rural function. The applicant has found that potential purchasers do not want such large sites, and that they seek to build their own residential unit rather than acquiring a refurbished hospital building. This subdivision is therefore wanting to provide more viable residential lots, and building sites for new buildings. Even so, the new lots will still be generous for residential lots, and will include a large area of greenery within each. The lots near Orokonui Road include 'no build areas' as an attempt to maintain the landscaping at the front of the development. The applicant seeks to be able to subdivide the land in sequence, with the lots being created in any order, so as to be able to address the requirements of one lot at a time in response to purchaser demand.

[63] A similar approach was taken for the subdivision of SUB-2012-66/2/A. The conditions of SUB-2012-66/2/A include the requirement for a detailed site investigation of each new lot under the NES provisions, and the need to remediate the land if it is proven to

be contaminated. The costs of this work, and the construction needed to refurbish existing buildings to residential standards, resulted in the applicant wanting to be able to deal with one site at a time. Hence, the staging of the subdivision consent of SUB-2012-66/2/A.

- [64] The staging of the subdivision consent is not considered to be inappropriate as the final result will be identical to a single stage subdivision creating eleven lots; the difference is purely in the timing of the works. As the order of the new lots being created is not known, there will need to be some creative drafting to the subdivision consent, should it be granted, in order to make it work.
- [65] Each stage of the subdivision will create one new site and balance area. As the applicant seeks flexibility in the ordering of the stages, the consent conditions will need to be explicit for the particular new site of each stage, but somewhat vague in regard to the balance land. However, the balance land of the last stage is to be Lot 41. Therefore, on the off-chance that each stage will be the last stage, all stages will need to contain conditions in respect of Lot 41 which may or may not be invoked, depending on whether Lot 41 specifically is the balance land. This is purely a housekeeping matter to structure the consent in a workable fashion, and not something that needs to be assessed specifically except as part of the overall question as to whether or not it is appropriate to subdivide the subject site into the number of lots proposed.
- [66] Of the two submitters, one supports the subdivision of the site into large residential lots as the land has been used for non-farming purposes for a long time. He believes the subdivision is appropriate. The second submitter opposes the subdivision but not for reasons to do with the number, size or shape of the proposed lots. His concerns are in respect to the access to Lot 53 which is over the right of way through 3 Chelivode Street beyond the point where the other lots diverge from this route. Mr Bennett seeks to have the layout of the subdivision altered so that Lot 53 is accessed via its upper edge through Lot 51.
- [67] If alternative access to Lot 53 is to be promoted, there are three other options: through Lot 41, 51 or 52. In terms of the plan view of the subdivision, any of these routes are viable provided the necessary easements for right of way are created. In respect of the topography of the land, there is a steep drop from the edges of the formed accesses, and a watercourse through low-lying land to negotiate. The applicant's agent is of the view that access via an internal route is not feasible.
- [68] I note that the proposed access at the lower edge of Lot 53 is an existing easement, and that the previous subdivision consent SUB-2012-66/2/A has already consented a layout which relies on Lot 53 obtaining access over 3 Chelivode Street. This proposed subdivision therefore seeks to recreate what is already consented albeit in a slightly different form. The right of way has also been used in the past to reach the barn and former house on proposed Lot 53, so the use of the access is historical.
- [69] Mr Bennett has not commented on access to Lot 44 except to note that the apartment on this lot fronts straight onto the right of way and there is a safety issue. Both the apartment and the main residential unit on this lot obtain access via the existing right of way, and therefore, the proposed access arrangements for Lot 44 are not significantly different from those for Lot 53. The only difference is the length of right of way used. It is not obvious whether Mr Bennett is aware of this and does not mind the use of the right of way for access to Lot 44, or whether he is unaware of this aspect of the proposal. Again, the right of way is an existing easement which can lawfully be used for Lot 44. Alternative access can be achieved via Lot 41 and/or Lot 43 which is the present situation.

Esplanade Strip (18.6.1(v))

- [70] The District Plan requires the creation of an esplanade reserve along the edge of the Orokonui Stream at the time of subdivision. This stream passes through proposed Lots 51, 52 and 53. Since the decommissioning of the hospital, there have been a number of resource consents issued for subdivision and use of existing buildings. Relevant to this discussion is RMA 2000-0189 (now renumbered RMA-2000-363878), issued 26 April 2000, for a three-lot subdivision of the hospital property. As part of that subdivision, the District Plan requirement for an esplanade reserve or strip was considered. The report states:

'The Proposed District Plan indicates an esplanade provision is required for a water body that runs through the site. As part of the comprehensive subdivision and land use application submitted in 1999, it was requested that consideration be given for a waiver of the esplanade reserve requirement in this instance. The application was forwarded to the Department of Conservation (DoC) for comment in this regard. These comments remain applicable for the current application, in which the applicant again request consideration of a waiver.'

'DoC advises that the gully in question does not contain a permanent waterway and merely carries runoff during periods of heavy rain. No fishery values were identified during a site visit. Due to the lack of fishery values and limited potential for recreational use of this area, the Area Manager of the Coastal Otago Area Office does not consider esplanade provisions to be necessary.'

- [71] The subdivision consent was issued with no requirement for an esplanade reserve or strip, although it does not appear that the Hearings Committee was consulted regarding the waiver.
- [72] The matter came up again at the time of SUB-2012-66. At that time, the applicant noted that there were no waterbodies on the site, but the District Plan shows an esplanade requirement through the site. The alignment of this waterway coincides largely with an existing gully through the property but the applicant noted that no watercourse of any consequence exists. I was unable to identify an actual watercourse at the time of my site visit. Due to the lack of any fishery values or public recreational purpose, the applicant requested that the Council not require an esplanade strip or reserve in this case. Furthermore, it was noted that both the water take from the adjacent Orokonui Stream and the effluent discharge to land are controlled by existing Otago Regional Council consents, with conditions imposed to safeguard the downstream biota and sensitivity of the receiving environment respectively.
- [73] The request to waive the esplanade reserve at the time of SUB-2012-66 was considered by the Hearings Committee on 25 September 2012. As the Processing Planner for the subdivision, I recommended that the esplanade reserve requirement be waived in full for the subdivision of SUB-2012-66 and any subsequent subdivision decision involving this section of waterway.
- [74] The Hearings Committee agreed with the applicant that the subject waterway has few values where an esplanade reserve or strip would provide any benefit, and the letter of agreement was issued on 2 October 2012. However, the decision states:

'The Committee considers that the determination of esplanade reserve or strip requirements is an aspect of the processing of subdivision consents along specified waterways, and that due process must be followed. Therefore, the fact that this waterway had previously had its esplanade reserve or strip requirements waived did not mean that it was unreasonable to revisit the issue as part of the next subdivision proposal.'

Furthermore, the Committee wished to retain the opportunity to revisit the matter of esplanades for this watercourse in the future as watercourses had the potential to change their nature in response to changes in ground water levels. Therefore, the waiving of the esplanade strip and reserve requirements was specific to Stages 1 and 2 of this subdivision proposal.'

- [75] As part of the consideration of this subdivision proposal, the Hearings Committee must therefore also consider whether or not it is appropriate to waive the esplanade strip requirement. Rule 18.5.5 of the Dunedin City District Plan identifies Orokonui Stream as one location where an esplanade strip will be required for the subdivision of any land into lots of less than 4ha. Where a lot is to be greater than 4.0ha, 'Assessment Matter 18.6.1(t) applies' (actually Assessment Matter 18.6.1(v)). This assessment matter gives the Council the option to require an esplanade strip, having regard to the provisions of sections 229 and 237F of the Act, the objectives and policies of the regional Plan:Coast, the Regional Policy Statement for Otago and the New Zealand Coastal Policy Statement. Section 229 of the Act details the purposes of esplanade strips, and section 237F provides for compensation for the taking of esplanade reserves and strips. It is not clear from Assessment Matter 18.6.1(v) whether the discretion regarding the esplanade strip decision lies with the Hearings Committee or Council staff.
- [76] Sections 77 and 230 of the Resource Management Act 1991 (RMA) allows for variation of the width of esplanade reserves, either in the District Plan or by a Resource Consent. In considering this request, Council is required to have regard to matters set out in section 229 of the RMA.
- [77] Section 229 of the Resource Management Act 1991 identifies the purposes for which these esplanade reserves or strips can be taken. The reserve or strip can have one or more of the following purposes:
- (a) *To contribute to the protection of conservation values by, in particular:*
 - (i) *Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - (ii) *Maintaining or enhancing water quality; or*
 - (iii) *Maintaining or enhancing aquatic habitats; or*
 - (iv) *Protecting the natural values associated with the strip or reserve; or*
 - (v) *Mitigating natural hazards; or*
 - (b) *To enable public access to or along any sea, river, or lake; or*
 - (c) *To enable public recreation use of the strip or reserve and adjacent sea, river or lake, where the use is compatible with the conservation values.*
- [78] The Orokonui Stream will pass through proposed Lots 51 to 53. The question of an esplanade strip along the edge of the Orokonui Stream has been assessed by the Leasing and Land Advisor, Parks and Recreation Services (PARS). He advises that the waterway identified in the District Plan is a gully that carries overland runoff during wet spells and is generally dry at other times. He notes:
- 'It has none of the values outlined in section 229 of the Resource Management Act 1991. Therefore, Parks and Recreation Services do not consider there is any requirement for esplanade strips under section 18.5.5 of the District Plan.'*
- [79] Parks and Recreation Services has not identified any reason to require an esplanade strip through the subject site. The matter was previously considered in 2000 by the Department of Conservation, and again in 2012 by the Hearings Committee, with neither party seeing any apparent benefit in an esplanade strip in this location.

- [80] I note that Rule 18.5.5 will be invoked each and every time there is a subdivision of the land next to the watercourse in this location, meaning that the provision for an esplanade strip must be reconsidered at the time of each subdivision (even minor boundary adjustments). In many cases, that is beneficial and allows Council to require an esplanade reserve or strip at a later date. However, I understand the authority to waiver lies with the Hearings Committee; therefore, each time a request is made to waiver an esplanade strip or reserve in part or full, a hearing will be required.
- [81] In this case, I suggest that the Committee, in considering the matter, make a final decision under the current District Plan to not require an esplanade strip at any subdivision proposal for this land as the subject waterway does not appear to have any esplanade qualities. I note that the Proposed Plan as notified does not show an esplanade reserve or strip requirement for this watercourse, so the need to revisit the situation at the time of future subdivisions will be removed once the Proposed Plan becomes operative.

Easements (18.6.1(i)) and Encumbrances

- [82] There are a number of existing easements and encumbrances listed on the title of the subject site as follows:
- [83] Easement Certificate **937406.4** provides the subject site (as part of the former CFR OT18A/413) with the right to convey telecommunications, the right to convey water, and right of way over Lot 1 DP 25982, being 58 Orokonui Road. The right to convey telecommunications is still relevant, while the right to convey water is likely to be relevant but not for the subject site itself as the land served has been subdivided from the hospital property. It is unclear what relevance the right of way is to the subject site as the subject site does not use this driveway. The right of way easement can be cancelled in terms of the subject site. The other easements can be cancelled for the subject site if not relevant.
- [84] Transfer **937406.5** provides the subject site with right of way over B DP 25982 which is the existing access to the property, and along its northern boundary to the wastewater treatment plant and beyond to proposed Lot 53. It is this right of way, belonging to 3 Chelivode Street, which separates the parcel of the wastewater treatment plant (Section 89) from the main body of the subject site (Lot 100 DP 506797), and it is this right of way which Mr Bennett does not want used for Lot 53. This right of way should be retained in favour of all the new lots, although it can be cancelled in part if so desired for those new lots which do not need to use the full length of the right of way.
- [85] Also created by Transfer 937406.5 is an easement for the drainage of sewage over 3 Chelivode Street which allows treated wastewater from the plant to drain to the inlet. Other easements for the drainage of sewage cross 3 Chelivode Street on different alignments between the Lot 100 DP 506797 and the wastewater treatment plant on Section 89. These need to be retained, but it is likely the three different alignments represented serve different buildings on the subject site, and can therefore be extinguished in part according to which new lots do not require them.
- [86] A Deed of Easement **5122238.1** allows the subject site to convey and store water over Section 1 SO 399633 (602 Blueskin Road), being Department of Conservation land. This easement is in favour of the subject site for a period of 30 years from 15 October 2001. The Transfer 5122238.2 allows this waterline and storage to be completed across Section 1 SO 23545 (3 Chelivode Street) in favour of the subject site. These easements are to be retained.
- [87] Transfer **5122238.2** is in respect to the conveyance of water over Section 1 SO 23545 (3 Chelivode Street) in favour of the subject site. The easements provide for

the subject site to obtain water supply from land to the south. Assuming that all the new lots will have reticulated water supply rather than self-supply, the easements should carry down automatically onto the new titles. It might be necessary to create new water conveyance easements across the new lots in order to ensure that full water rights are catered for within the subject site itself.

- [88] Easement Certificate **5132128.5** lists numerous easements over the subject site in favour of Lots 1 and 2 DP 312886, being 64, 66, 66A, and 68 Orokonui Road and part of 58 Orokonui Road. These easements include right of way through the subject site to provide access to 64, 66, 66A and 68 Orokonui Road; the right to convey electricity and telecommunications; the right to convey water; and the right to drain foul sewage.
- [89] In turn, the subject site has the right to convey telecommunications over Lot 2 DP 302886 (58 Orokonui Road), and the right to convey foul sewage over Lot 1 DP 302886 (specifically 68 Orokonui Road). The telecommunications easement appears to link with the easement of 937406.4, with the line apparently passing through the cemetery (Section 4 Orokonui Road) as well, although there is no corresponding easement. These easements can both be retained in terms of the entire subject site.
- [90] Easement Instrument **9514902.6** was created in 2013 at the time of Stage 1 of SUB-2012-66 and reserved right of way over the existing driveway through the subject site in favour of 80 Orokonui Road. Easement Instrument **9514902.7** was issued at the same time for a multitude of service easements through the subject site. These easements will pass down automatically onto the new lots as appropriate, and new dominant tenements registered to ensure that all the new lots have full rights to convey water, electricity, telecommunications and to drain sewage except where already varied by **9907529.1** in 2014.
- [91] More recently, Easement Instrument **10956955.2** was created over the existing access through the site in favour of Lot 9 SUB-2012-66/2/A (90D Orokonui Road). These rights of way will carry down automatically onto proposed Lot 41.
- [92] Two consent notices are registered on the title of the subject site. The first, **937406.1**, gives the owners of Lot 1 DP 25982 (58 Orokonui road) a share of the private water supply shared with the subject site, and the right to discharge to the private sewage scheme on the subject site. These rights are actually preserved by easements, and the consent notice is effectively redundant.
- [93] The second consent notice **9514902.6** requires development on the subject site on slopes greater than 15° to have a geotechnical report prepared by a suitably qualified person confirming the suitability of the site for development. This is applicable to all the proposed lots and should pass down automatically onto any new title created by this subdivision.
- [94] The proposed subdivision will require new right of way easements over the existing access through the subject site. Service easements will also be required to ensure all the new lots will have adequate access to services.
- [95] One of the submitters is concerned about the existing right of way easement over 3 Chelivode Street. Mr Bennett advises that this easement was created in 1986 when the hospital was separated from the farm land. The access served several of the hospital buildings. Mr Bennett does not believe that this right of way is suitable for use by residential traffic because of the farm use of the access and the standard of formation.
- [96] Unless the easement documentation specifically restricts the use of a right of way, then the dominant tenement is able to use the access for whatever purpose they so desire, using any vehicle. As such, legally, the existing easement can be used for the

proposed residential activity of Lots 44 and 53. Whether or not it is wise to do so is another discussion.

- [97] The Council has the ability to require the cancellation of redundant easements at the time of subdivision. Section 220(1)(g) of the Resource Management Act 1991 states that a consent can be granted and include:

'a condition requiring that any existing easements in respect of which the land is the dominant tenement and which the territorial authority considers to be redundant, be extinguished, or be extinguished in relation to any specified allotment or allotments.'

- [98] The question then arises as to what constitutes a 'redundant' easement. I consider an easement to be redundant when it cannot be used by, or is no use to, the dominant tenement. 'Redundant' is not the result of the Council deciding the dominant tenement *will* not use it, particularly when the dominant tenement has already said quite clearly that they intend to. I quote from *Haig v Waimea County Council*:

'Redundancy must be judged by reference to the dominant tenement, and as the appellants wished to continue to use the right of way ... it was not redundant.'

- [99] The Council obtained legal advice on the meaning of 'redundant' back in 2009 in respect of another right of way easement and another site. The legal advice received at that time supports this view and, consequently, concurs with the Tribunal's findings of 1980. The legal advice given to the Council was that if the applicant proposes to use an easement, section 220(1)(g) cannot be used to cancel that easement. The Property Law Act 2007 is very clear on the rights given by a right of way easement, and these are not qualified further in any way by statements such as, 'provided the access meets the District Plan requirements', or, 'provided the Council allows its use by the dominant tenement'.

- [100] If we recognise the rights given by the easement, and accept that the Council has no authority to cancel the existing right of way, can Council restrict its use by another means? As a non-complying subdivision proposal, it is legally possible for the Committee to impose a condition requiring access to be via one of the other lots, but the Newbury Principles direct that such a condition must be reasonable in the circumstances. The Committee therefore needs to be certain that such a condition is appropriate for resource management reasons, or the condition will be open to challenge. The Committee also needs to be confident that such a condition does not extend beyond the scope of the application, as the application before the Committee does not show a proposed right of way over Lots 41, 51 and/or 52.

- [102] It is my view that creating an access to Lot 53 via Lot 41, 51 or 52 is possible but likely to be expensive because of the change in ground levels involved and the need to negotiate a stream (or at least a damp basin) covering the central area of Lots 51, 52, and 53. The easement has previously been used for access to a residential dwelling (on proposed Lot 53), so the subdivision proposal will not create an entirely new situation. These reasons, combined with limited Council authority to cancel the existing easement, leads me to conclude that the applicant has a strong argument for using the right of way for access to Lot 53. Any alternative access arrangements will have to be reached in full agreement with the applicant. I consider that Mr Bennett has the scope to negotiate with the applicant for a more suitable access arrangement (perhaps in regards to farm use if not residential use), but Council cannot reasonably require such an action.

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

- [103] The application notes that the subdivision will rely on its own existing infrastructure, and no connections to Council-owned services are required.
- [104] The Policy Analyst, Three Waters Group, has considered the application. She notes that the subdivision is located within the Rural zone, and outside of the Rural Water Supply Areas as shown on Appendix B of the *Dunedin City Council Water Bylaw 2011*. Consequently, there is no Council-owned reticulated water supply available for the subdivision to connect to. There is a historic private water system within the subject site which the applicant proposes to use for water supply. The water for this scheme is sourced from the Orokonui Stream. A service company 'Orokonui Service Company Limited' was established in 2012 and is responsible for the maintenance and delivery of water from the scheme.
- [105] Alternatively, stormwater collected from roof surfaces may be used for domestic water supply and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.
- [106] All aspects relating to the availability of the water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies.
- [107] As the proposed subdivision is located within the Rural zone, there are no Council-owned reticulated wastewater services available for connection. There is a historic private wastewater system including an effluent treatment plant which is proposed to be utilised for wastewater. A service company 'Orokonui Service Company Limited' was established in 2012 and is responsible for the wastewater scheme. Alternatively, any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.
- [108] As the proposed subdivision is located within the Rural zone, there is no Council-owned stormwater infrastructure for discharge. Disposal of stormwater is to water tables and/or watercourses on-site, or to suitably designed on-site soak-away infiltration system or rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.
- [109] Proposed Lots 41, 42, 44, 53, 61, 81, have wastewater and stormwater services to an existing private on-site reticulation system. Proposed Lots 43, 51, 52, 71, 82 are to have wastewater and stormwater drainage to the private on-site services. Any existing drainage through adjusted boundaries for new lots will require service easements. It should be noted that these services might require pumping.

Hazards (18.6.1(t))

- [110] The suitability of the site for development was assessed by MWH New Zealand Ltd at the time of SUB-2012-66. The Hazards Register identified the potential for contaminated land and fill. The contaminated land is associated with an Otago Regional Council Earthworks Consent permit reference 97463. This consent expressly states that, *'The consent holder shall inform the ORC of any changes to the proposed land use in the area of the fill, being a carpark, and no change in land use will be made until written approval from the ORC has been obtained.'* There was also a hazard of 'alluvial fans' on the Hazards Register, but the Consulting Engineer did not consider the risk to be significant.
- [111] SUB-2012-66 was issued with a consent notice condition reading:

'That should new development be proposed for this land on slopes greater than 15° to the horizontal, the building consent application shall be accompanied by a geotechnical report prepared by a suitably qualified person confirming the stability of the building site.'

- [112] The application for this subdivision proposal has been submitted with a geotechnical report prepared by GeoSolve Ltd, dated 21 March 2018. The report focusses on the five new building platforms of Lots 43, 51, 52, 71, and 82. All of these lots except proposed Lot 71 have specific building platforms shown on the application plans. The investigation sought to determine whether any softened or unsuitable soils or other geotechnical constraints for development are present on these five lots. The report also discusses groundwater and slope stability based on a review of the available hazard maps and visual inspection. The report identifies the main risk to stability being in relation to the uncertified and over-steepened fill already on-site.
- [113] The GeoSolve report recommends that at the detailed design and building consent stage for future development on these lots, specific investigations should be carried out in accordance with NZS 3604 for individual lot developments when foundation layouts are available. The report concludes that, provided the recommendations of the report are carried out, the site is considered stable for residential development, and will not create or exacerbate instability on this or any adjacent property.
- [114] Council's Consulting Engineer, Stantec, has considered the application in relation to the Hazards Register, street files and available aerial photography. He notes that the Hazards Register identifies this site as being subject to land stability risks (Hazard 10106).
- [115] The Consulting Engineer advises that the underlying geology of the site consists of Cossyrite Phonolite of the 3rd main eruptive phase. The site is large and typically less than 12° in slope with some localised steeper areas. There are no major earthworks or retaining structures proposed as part of this subdivision proposal. The recommended conditions of consent are:
- *All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s*
 - *Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development*
 - *All advice and recommendations provided in Geosolve's geotechnical report should be carried through as conditions on the applicant.*
- [116] Stantec recommended that the subdivision not be declined on the basis of known natural hazards. There are no general potential instabilities of concern, and the proposed development is not expected to create or exacerbate instabilities on this or adjacent properties.
- [117] It is perhaps worth noting that the Hazards Register identifies the site, as an alluvial fan, to be at risk from land instability whereas the Proposed Plan shows the same area to be a flood risk from coastal flooding. These appear to be the same risk.

NES Matters

- [118] The HAIL status of the subject site was assessed at the time of SUB-2012-66 by Tonkin & Taylor Ltd. The report of 14 November 2012 concluded that the bulk of the land has negligible potential for ground contamination, but there were areas of potential contamination resulting from previous land uses. The report recommended further investigation of localised areas, particularly around structures, as the subdivision and land use changes were not permitted activities.
- [119] Tonkin & Taylor Ltd identified the following sources of *possible* contamination relevant to this application:

- Buried asbestos products resulting from a building being demolished and buried within proposed Lots 41, 43 and 44. There is also an underground fuel tank on proposed Lot 44.
- Fill containing lead contamination and building waste within proposed Lot 61.
- Lead paint on existing buildings.

[120] The Tonkin & Taylor report identified a number of areas of interest within the property, but did not establish the levels of contamination, if any, nor the remediation or mitigation actions necessary. It was therefore necessary to determine this information at the time of subdivision, so that any contamination present could be addressed prior to sale and development or redevelopment of the new lots.

[121] The decision of SUB-2012-66 comments:

'As proposed Lot 2 is to be further subdivided at Stage 2, with no changes in land use arising for Lot 2 as a result of the Stage 1 subdivision, it is recommended that any detailed site investigation of this land be undertaken at Stage 2. The Tonkin & Taylor report advises that there is no evidence of potentially contaminating activities occurring on proposed Lot 1, and there is no further investigation required for this land. The existing building and surrounds on proposed Lot 3 may be subject to lead paint contamination, and should therefore be investigated more thoroughly to satisfy the provisions of the NES, but no regard needs to be given to the decommissioned coal fired boiler associated with the building.'

'At Stage 2, the land uses of proposed Lots 4 to 9 need to be considered in greater detail. The report identifies lead paint, buried asbestos, and a disused fuel storage tank as being of interest in Lot 4. Lead paint is also a possible contaminant for Lots 5, 6, 8 and 9. There are also building demolition materials on Lots 6 and 8. A detailed investigation report on these matters will be required.'

[122] At the time of s224(c) certification, the consent conditions of SUB-2012-66 require:

- a) That a detailed site investigation of areas where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings on new Lots 4, 5, 6, 8 and 9; and the sites of fuel tanks and/or boiler houses, shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- b) The works, if any, identified by the report of condition 6(a) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used without danger to human health.*

[123] Given the amount of work involved in the above conditions, the consent holder varied the consent by SUB-2012-66/2/A so as to be able to tackle each of the new lots separately. Should this consent be granted, it is my view that the above conditions should be reimposed on those lots where it is relevant, being those with former hospital buildings, ruins, or buried material. This will not apply to those sites having no former development. On the basis of information in the Tonkin & Taylor report, these lots will be Lots 51, 52, 71 and 82.

Earthworks (Rule 17.7.5(ii))

[124] This consent does not address the future development or redevelopment of the new lots, except in regard to remediation of any HAIL sites. This consent does not address

any earthworks for this subdivision associated with any subsequent redevelopment of the site. Should future earthworks breach the performance standards of Section 17 of the District Plan at the time of development, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

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

- [125] The District Plan requires a residential unit to maintain side and rear yards of 40.0m within the Rural zone. The proposed lots are all too small for new development to occur without reducing the 40.0m yard requirement. The underlying consent LUC-2012-351 did not directly address the yards as the residential use of the proposed lots was all in respect to existing buildings.
- [126] In this case, the applicant is seeking to create vacant sites which will involve new development, and there is the potential for existing buildings to be demolished and the land redeveloped. As such, the applicant has nominated building platforms on Lots 41, 51, 52, and 82, and seeks a general reduction in yards to 4.5m except where already modified by a defined building platform. The applicant proposes that existing buildings that are to be demolished will lose any existing use rights; however, existing use rights exist for 12 months and cannot be cancelled, in effect, by Council. In light of the proposal to set yards at 4.5m, this will only have implications where the existing buildings are closer than 4.5m to any boundary. The existing use rights will mean that any such encroachment can be recreated within 12 months of demolition, but only to the same extent and in the same location as the original building. The existing buildings will also have new yard breaches in terms of the new boundaries, and existing breaches in terms of existing boundaries.
- [127] I consider the proposed yards to be appropriate given that the proposed lots are clearly not for rural use but are all to be generously-sized residential lots. Yards of 4.5m are consistent with, or greater than, the District Plan requirements for all the residential zones (excepting Residential 6 in East Taieri where the front yards are to be 9.0m).
- [128] While yards of any size are of limited significance within the subdivision (as there are no other parties involved at the time of creating the new lots and determining the yard space), it is more of an issue in respect of external boundaries. Adjoining neighbours could end up with development much closer to the boundary than they expected. Those parties having legal rights to use the shared access have been directly notified by Council except those having already provided affected party approvals. The group notified also includes the immediately adjacent neighbours. These parties have had the opportunity to view the application which details the proposed yard spacing for the new lots as described above.
- [129] Two neighbours have made submissions. Mr Visser has submitted in support of the application, and the concerns he has are not in respect of the possible positions of new development. Mr Bennett opposes the application, but again, has not made any comments in respect of the proximity of future buildings to the common boundary except in regard to the existing apartment on proposed Lot 44. Mr Bennett is concerned that the apartment has no setback from the right of way (i.e. no yards at all) and that this is a safety issue for the right of way.
- [130] The lots abutting Mr Bennett's property will be proposed Lots 43, 44, 53, 61, 81 and 82, as follows:
- Lot 43: There is to be a 'no-build zone' at the front of Lot 43, and it is unlikely that any new development on this lot will be built closer than 40.0m to the boundary with 3 Chelivode Street. As such, there will be no yard breach even with a nominal 4.5m yard reduction.

- Lot 44: There is an existing apartment immediately next to the boundary, and the existing residential unit approximately 16.0m from the boundary. The placement of the structure of the apartment is an existing situation which does not change with subdivision. Its use for residential activity is also an existing situation.
- Lot 53: This lot has an existing barn next to the right of way, and a derelict workshop/house at the southeast corner. Both structures are within 15.0m or so of the boundary. The application suggests that the barn is likely to be demolished prior to subdivision, thereby resolving any yard breaches near the right of way. A new dwelling is to be built on this lot, but there is no building platform identified for this work. The boundary shared with 3 Chelivode Street is either next to the right of way or is defined by a mature hedge. It is unlikely that a 4.5m yard space will adversely impact on 3 Chelivode Street, but the Committee has the option of imposing a greater yard space next to the boundary if it considers it appropriate.
- Lot 61: There were a number of buildings on this site which have been cleared since 2013 except for an existing dwelling. This building is approximately 22.0m from the boundary with 3 Chelivode Street. There is no expectation that this building will be removed and replaced, but if it is, a new dwelling could be built much closer to the boundary, should the 4.5m yard space be approved. Again, the Committee has the option of imposing a greater yard space for this lot in order to maintain a separation distance between buildings and the boundary.
- Lot 81: This lot has an existing dormitory building which is considered to be too large for a residential dwelling and is expected to be demolished in part or in full. The existing building is approximately 6.5m from the boundary. A new building could be built closer to the boundary unless a greater yard space is nominated for this external boundary.

[131] While the adjoining neighbour has not submitted against the proposed yard spaces, it is my view that the external yard spacing next to 3 Chelivode Street should be greater than 4.5m. There is unlikely to be any direct effect on 3 Chelivode Street as this is a large rural property with no residential use near the subject site, but nevertheless, there is no need within the subject site to place new buildings close to this boundary either. I consider an external yard of 10.0m in respect of new buildings to be appropriate. This will still allow the new lots to be developed but will maintain a reasonable separation distance from the farming activity on the neighbouring property.

[132] There are also other neighbours to consider. The owners of 90D Orokonui Road has provided affected party approval to the proposal, including the 4.5m yards, and as such, pursuant to section 104(3)(a)(ii), Council must not consider any effects on this party. Any other neighbours are separated from the buildable areas by the common driveway at least. In most cases, any residential activity on these neighbouring properties is some distance from the common boundary.

[133] The exception is 60 Orokonui Road where the house is close to the shared accessway. The neighbours of 60 Orokonui Road are on a lot which was created by SUB-2012-66, and therefore were part of the original subdivision proposal. While they have not provided affected party approval, they were notified and have chosen not to submit on this application. I note that the land next to their property is part of the no-build areas of Lots 41, 42 and 43, and development is not anticipated close to the house of 60 Orokonui Road. They will not be affected directly by a 4.5m yard.

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

[134] Assessment Matter 6.7.15 of the District Plan directs Council to consider the effects of residential units in the Rural zone in terms of cumulative effects, potential conflict, the covering of soils by hard surfaces, the effects on neighbours' amenity and economic

well-being, the effects on the open nature of the environment, and the degree to which the productive potential of the site and future sustainable use is compromised.

- [135] As noted above, the subject site is unusual for a 'rural' property in that it has no rural use. Its previous use as a hospital in generous grounds is not a typical rural activity. The subdivision of SUB-2012-66 allowed the existing hospital buildings to be reused, renovated, or adapted for residential use, but did not specifically seek to increase the development of this land so much as to allow the existing buildings to be held in different ownership.
- [136] This subdivision proposal will create eleven new sites compared to the four of SUB-2012-66/2/A. The new lots will be smaller, and several currently have no development but will become residential sites. Accordingly, the proposal has the potential to have cumulative effects on the Rural zone by further fragmenting the land and increasing the number of residential units. Given that this site is unusual, and that the proposed lots will still be large for residential lots, it is my opinion that the proposal will not have adverse cumulative effects on the Rural zone.
- [137] While Mr Bennett has submitted in opposition to the proposal, it is the use of the right of way, and not the proposed residential use of the land specifically, which interests Mr Bennett. He has concerns that the increased use of the right of way by residential traffic will create conflict.
- [138] As discussed above in the section on Easements, the legal rights to use the farm access are existing, and SUB-2012-66 has already consented to residential use of this land. However, Lot 5 of SUB-2012-66 is to become Lots 51, 52, and 53 of this subdivision, and while Lot 5 could be accessed internally from the hospital driveway, Lot 53 cannot as the subdivision proposal currently stands. It was always possible that Lot 5 would be accessed via the right of way along the northern edge of the subdivision, but Lot 53 *must* be accessed via this route (unless the layout is varied in some way). If the Committee is of the view that this will have cumulative effects on the operation of the farm access and therefore conflict issues, then it can consider requiring alternative access arrangements (i.e. a new right of way or subdivision layout giving Lot 53 frontage to the internal shared access), but I do not believe that it can cancel the existing right of way easement. This leaves it open to residential use. Even if the land of Lot 53 is to be incorporated into Lot 51 or 52 (i.e. there is one less lot and all the lots except Lot 44 will have 'frontage' to the internal road), I am not certain there is any means to stop the use of the existing right of way for residential use should the developer decide to do so.
- [139] The future development of the proposed lots is not expected to have adverse cumulative effects arising from the increased hard surfacing of the ground. There are a number of options for stormwater drainage (as discussed above in the section on Infrastructure) but most likely drainage from the new lots will go to a watercourse through the site and out to Blueskin Bay across 3 Chelivode Street. There is no known flooding risks which could be exacerbated by the increased residential development of this land. Some of the new development will be balanced by the removal or reduction of existing buildings and sealed surfaces.
- [140] Regarding the subject of effects on neighbours' amenity and economic well-being, there is unlikely to be any significant adverse effects. The only neighbour to oppose the subdivision proposal is Mr Bennett of 3 Chelivode Street. While Mr Bennett might have valid concerns about the safe operation of the existing access, the use of the existing right of way for Lots 44 and 53 will not prevent the farm use of the same access. There is no residential development on 3 Chelivode Street within 800m (as the crow flies) of the subject site, and this residential activity obtains access via a completely different route off Doctors Point Road. The proposal is therefore highly unlikely to have adverse cumulative effects on neighbouring amenity or economic well-being of 3 Chelivode Street.

- [141] The Council is also to consider the effects on the open nature of the environment, and the degree to which the productive potential of the site and future sustainable use is compromised. The proposal is unlikely to have any significant effects on the open nature of the environment as the subject site is already developed in part and has mature landscaping which, for the most part, is expected to remain. It is not a site that is readily visible to public view. There will be no loss of productive potential and the future sustainable use of the rural land as it is currently not used as farmland, and the declining of consent will not result in it being so.
- [142] There is a small area of high class soils identified along the northeast (lower) edge of the subject site. This land is already developed as lawn and building sites, and the high class soils are not utilised for any productive use. The proposal might not result in a productive use of the high class soils, but it will not result in any loss of the high class soil resource or productive use either.
- [143] In conclusion, while there will be more undersized Rural-zoned lots created, and an intensification of residential activity, the proposal is not considered to have adverse effects due to the residential use of the land.

Landscape (6.7.25)

- [144] The subject site is not in a recognised landscape area, and therefore the Landscape Section of the operative District Plan is not relevant to this subdivision proposal. The Plan generally does not seek to control the position of buildings where permitted outside of landscape areas, nor the appearance or colour of the buildings. The general provisions of the Rural zone in respect of rural character and visual impact do apply, however, and need to be considered. The non-complying status of the application also enables wider consideration of effects which can include the landscape setting (as a factor contributing to amenity).
- [145] As noted above, the site is difficult to see from public viewpoints. The end of Orokonui Road is over 80m to the north of the subject site, and the most public viewpoint is from a walkway around the edge of the bay. There is lawn and mature trees at the northern end of the subject site, and the applicant has promoted 'no-build' areas within Lots 42, 43, and 44, and a defined building platform within Lot 41, to retain the landscaped edge of the subject site. Elsewhere within the site, the land is already developed with existing buildings, or building platforms have been promoted for new builds that do not require wholesale clearance of existing landscape plantings. The proposed subdivision and residential activity is not expected to have adverse effects on the landscape and open nature of the rural environment.
- [146] There is currently a sweeping lawn at the entranceway to the subject site (to the east of the common driveway) which, following subdivision, will be held within Lots 41, 42 and 43. The proposed restrictions on building within this area will ensure that it stays free of structures, but the multiple ownership will mean that fences and shrubbery can be introduced in an uncoordinated fashion. If the intent of the no-build areas is to retain the lawn in its present state, then there needs to be additional controls over Lots 41, 42, and 43, or alternatively, the lawn will need to be held in one lot. This may not ensure that it stays as lawn, but it will at least one party will have full control over its management. The Committee might like to consider whether retaining this area as lawn is an appropriate landscaping goal, and if so, how this is best achieved.

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

- [147] All of the proposed lots except lots 44 and 53 are to obtain access via the internal hospital driveway which passes along the western side of the subject site. This is formed and hard surfaced. Proposed Lots 44 and 53 are to be accessed via the existing right of way over 3 Chelivode Street along the northern edge of the subject site. It is also possible that Lot 43 will use the right of way beyond the point where the

internal driveway peels off, and there is already an existing driveway in this location which serves the facilities at the northern end of the subject site.

- [148] The proposal has been assessed by Council's Graduate Planner – Transport. He notes that access to Lots 43, 44 and 53 will be achieved via the existing farm right of way from Orokonui Road. This right of way is already formed, hard surfaced and adequately drained for its duration.
- [149] The internal driveway over Lot 41 will provide access to Lots 41, 42, 51, 52, 61, 71, 81 and 82. This driveway will provide vehicular access to eight residential lots, plus two other properties, 80 and 90D Orokonui Road. 80 Orokonui Road has consent for five residential units, and 90D Orokonui Road has consent for two residential units. This is a total of 15 residential units potentially using this driveway.
- [150] Rule 20.5.7 (v)(b) specifies that private accesses in rural areas that serve four to twelve residential units are required to be a minimum 5.0m formed width. Transport notes that the right of way access currently consists of a 5.5m wide formation with kerb and channels either side. Therefore, the internal driveway exceeds the relevant requirements of the District Plan except that there is the potential for three users more than the maximum allowed by the District Plan. It is noted in the application that parts of the access are damaged, and require maintenance. It is also noted that maintenance is scheduled to be undertaken as part of the overall development works. Consequently, it is advised that a formal agreement be drawn up between the owners and users of all the private accesses to clarify their maintenance responsibilities.
- [151] As this is a rural site, pursuant to Rule 6.5.3 (iv)(b), there are no minimum parking requirements for residential sites that do not front a state highway. In terms of manoeuvring, Transport accepts that there will be ample space on all new lots to provide for on-site manoeuvring. Furthermore, it is advised that in the event of future development on the site, Transport would assess provisions for access, parking and manoeuvring at the time of resource consent/building consent application.
- [152] The Graduate Planner – Transport commented in an email dated 25 September 2018 that while the private access will serve more than twelve users, the driveway formation exceeds District Plan requirements for private accesses in rural areas. It is formed to a greater width, has kerb and channel as well as footpaths in many locations, and is hard surfaced (with some damage to the surfacing evident). Transport notes that the damage to the surfacing is evident next to Lots 51, 81, 61 and 71. The application notes that maintenance is scheduled to be undertaken as part of the overall development, and Transport supports this. The access is considered to be acceptable subject to the appropriate maintenance being undertaken.
- [153] Regarding the use of the right of way around to proposed Lots 44 and 53, the Graduate Planner – Transport comments:

'The Farm Right of Way will provide access to Lots 43, 44 and 53. I note that the subject site has an existing Right of Way easement and therefore Lots 43, 44 and 53 have legal access over this driveway. The access appears to be generally sealed, however, is subject to some damaged sections. It is Transport's view that the Farm Right of Way is the most appropriate means of access for Lots 43, 44 and 53, as there is an existing easement for access purposes.'

- [154] Transport considers that the proposal will have no more than minor impact on the transportation network, and did not identify any conditions for consent.

Archaeological Sites (8.13.16)

- [155] There are no known archaeological sites on the subject site. Should any archaeological material be uncovered during future development, the applicant will need to obtain an archaeological authority before continuing further. This matter is administered by Heritage New Zealand in accordance with the Heritage New Zealand Puhere Taonga Act 2014. An accidental discovery protocol should be included as either a condition or advice notice.

Physical Limitations (18.6.1(k))

- [156] Regarding the question as to whether or not the subdivision will produce lots having physical limitations rendering them unsuitable for future use, I note that the proposal lots will all be greater than 2300m². From a purely practical view point, the proposed lots are each of suitable size and shape for a residential dwelling and curtilage. There are no geotechnical issues affecting this land and no known natural hazards which are expected to compromise the building potential of the new lots. Accordingly, there is no expectation that the proposed subdivision of the subject site will create any lot having physical limitations rendering it unsuitable for future use. Any limitations are introduced by the zoning of the land which does not allow houses to be built on-site as permitted activities.

Amenity Values (6.7.3 & 8.13.5)

- [157] The Resource Management Act 1991 defines 'amenity values' as:

"... those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"

- [158] The existing environment and character of an area largely determines the amenity values of any site, but amenity values are also expressed by the District Plan through the zoning provisions. In this case, the proposal is for the subdivision of a Rural-zoned parcel of land, but one which has been used for non-rural use for many years. Now that the previous hospital on this site has closed, it has been a challenge for the owner of the subject site to find a management option for the property.

- [159] Council has already approved the subdivision of the site into smaller lots for residential use on a non-notified basis, so there has already been an acknowledgement by Council that the rural amenity values for this site are not entirely appropriate. As was noted in the decision for SUB-2012-66:

'Land use consent is required for the continuation of existing established uses or consented activities, but these do not result in any material change to the activity on-site. In the case of proposed Lot 5, land use consent is to be provided for residential activity, which will allow the replacement of the old house on-site with a new house and accessory buildings. Overall, the proposed subdivision will allow the buildings on the subject site to be owned by different parties, but will not result in any significant change to the development of the land. For these reasons, the proposed subdivision and land use matters are not considered to adversely affect the amenity values of the Rural zone.'

- [160] While this proposal will increase the number of residential units on the land, none of the adjoining neighbours has identified this as an adverse effect on amenity. The proposed housing will fit in with the existing landscape, and will be centrally located within the subject site. It is possible that none of the new dwellings, should any be built, will be readily visible from any public viewpoint. The additional residential use of the land is not expected to adversely affect the amenity values of the site and area.

Conflict and Reverse Sensitivity (6.7.26)

- [161] The applicant seeks land use consent to reauthorise the former tavern activity within proposed Lot 41. There is no tavern currently operating from this site, but there are two existing consents for the tavern: RMA 953558 (now renumbered RMA-1995-358902), which authorised the use of one building as a tavern (including meals and takeaways), while RMA 960462 (now renumbered RMA 1996-359650) transferred the tavern from this building to the hall. RMA-1995-358902 was processed on a notified basis, and was subject of 40 subdivisions; 30 in support and ten in opposition.
- [162] RMA-1996-359650 was also notified. There were nine submissions in support and three in opposition. Following the granting of consent, the decision of RMA-1996-359650 was appealed as RMA 739/96. The appeal was upheld in part and the conditions of consent varied so as to allow Sunday hours of 9.00am to "12.00pm" (midnight?). The consent order to this effect, Decision No. C9/197, was signed on 10 February 1997.
- [163] The 'Saratoga Bar & Restaurant' was opened, but has since closed. The giving effect of RMA-1996-369650 resulted in RMA-1995-358902 'lapsing' (as per condition 11 of RMA-1996-369650), although this is not obvious from Council records.
- [164] Land use LUC-2012-351 reissued consent for the tavern as part of the subdivision SUB-2012-66 to allow the tavern to operate from the new Lot 4 of that subdivision. This was repeated by LUC-2016-420 when the subdivision consent was varied by SUB-2012-66/2/A.
- [165] While no submitter has expressly opposed the proposal to reauthorise the tavern, it is possible that the tavern could have adverse effects on the wider neighbourhood given that it is a traffic and noise generating activity. However, the original consent for the tavern has been given effect, and the tavern could re-establish in its former state tomorrow without new consent (the issue of a liquor license is another subject).
- [166] The subdivision of the site complicates the situation a little in that the 'site' containing the tavern has changed. General practise by Council is to reissue the existing land use consent in terms of the new site, particularly if nothing else is really changing. In this case, the tavern only ever occupied a small portion of the hospital site, and the subdivision of SUB-2012-66 or SUB-2012-66/A did not reduce the area available for use by the tavern beyond that actually used. All the previous conditions of consent from RMA-1996-359650 were carried forward onto the new consent.
- [167] Should the tavern be reopened in the future, it must comply with the conditions of consent of RMA-1996-359650 (with Sunday's hours of operation being included). This provides for a significant activity: A maximum of 200 people in the hall (if alcohol is to be served) and 120 in the bar/restaurant. The tallies do not appear to be inclusive of each other, and could result in 320 people on-site. The hours of alcohol consumption (not the opening hours) are limited to Monday to Wednesday 9am to 10pm; Thursday 9am to 11pm; and Friday to Sunday, 9am to midnight. Other conditions require 65 on-site car parks, the requirement of a pathway to the end of the legal road, signage, controls on water and sewage, and the provision of lighting.
- [168] Mr Bennett has raised the subject of the tavern situated on proposed Lot 41 in his submission, primarily in respect to the use of the right of way and wanting clarification of maintenance responsibilities. As the right of way is a civil arrangement between landowners, it is not the Council's responsibility to administer the management and operation of the right of way. I will note, however, that Schedule 5 of the Property Law Act 2007, sets out the rights and obligations associated with right of way easements, which might set Mr Bennett's mind at ease. It is Council's normal practice to recommend that a formal agreement be drawn up between the owners and users of a right of way to clarify such matters on an on-going basis.

[169] The Committee might wish to discuss with the applicant the reasons for wanting the tavern consent reissued for Lot 41, given that the tavern has been closed for a number of years. As the residential activity on the subject site will intensify with this proposal, the tavern activity could cause conflict with the new (and existing) neighbours.

[170] In light of its consenting history, any concerns that the tavern might compromise amenity values of the wider area are difficult to address. If amenity values are of concern, and the Council would prefer the tavern not to re-establish, there are several options.

1. Pursuant to section 126 of the Resource Management Act 1991, the Council can cancel a consent that has been exercised in the past but not within the last five years. The consent holder has three months to challenge the cancellation, thereby commencing a process involving affected parties and consideration of the objectives and policies of the District Plan.
2. The Council need not reissue consent for the tavern in respect of proposed Lot 41; however, there is at least one lawyer in town who would argue that the re-consenting of the activity is unnecessary as the tavern is occupying the same land (if not actually the same site), and the lack of a new consent would not prevent its reopening.
3. The Committee can suggest that the applicant surrender the tavern consent but I am not sure that it can enforce the surrender of the consent. As this subdivision and residential development proposal is a non-complying activity, the Council might have scope to negotiate with the consent holder. It might not be appropriate to intensify the surrounding residential activity if there is to be a tavern operating in the locality.

[171] Alternatively, if the consent is to be reissued, it might be appropriate to revisit the conditions with the intent of minimising any conflict between the tavern activity, residential activity, and the farming activity of 3 Chelivode Street..

One possible option is to require as a condition of consent the surrender of all previous land use consents for the tavern. The new consent will then have a lapse period which will require the tavern to (re)establish within a certain period (most likely, five years from the date of the decision although the Council has the option of selecting any lapse period it considers appropriate). This option will provide consent for the tavern, with new conditions, but will also leave the residents with a finite period of uncertainty rather than an endless timeframe where a tavern can open for business at any point in the future.

Cumulative Effects (6.7.4)

[172] The nature of cumulative effects is defined in *Dye v Auckland Regional Council* I [2002] 1 NZLR 337, as the " ... gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

[173] The District Plan directs the Council to consider the cumulative effects on amenity values, rural character, natural hazards, infrastructure, roading and traffic, and landscape. I do not consider that the proposed subdivision into large residential lots will have adverse cumulative effects on amenity values or rural character for the reasons discussed above. The subject site is not a rural productive property, and has a long history of non-rural use. The site has mature vegetation which screens it from general public view. The proposed residential use of the land will utilise existing access and service infrastructure, and will not involve the removal of much landscape planting.

- [174] There are no known natural hazards affecting this land which are expected to be exacerbated by this proposal. As such, there will be no cumulative effects in terms of natural hazards.
- [175] The increased use of Orokonui Road from an additional six residential units is not expected to have any adverse effects on the operation of the road. However, the additional residential units will make a total of 33 legal users (but only 21 likely users) of the private access from the end of Orokonui Road to the entrance of the subject site. At this point, three existing or proposed users will peel off from the shared access. Within the subject site, the shared access will serve up to 30 legal users (or 18 likely users). The District Plan treats private ways differently from legal road, and a maximum of twelve users are permitted for a right of way. The increased use of a driveway that is already over utilised (according to the District Plan) could have adverse cumulative effects on the operation of the access.
- [176] Mr Visser has raised the issue of rubbish collection at the end of Orokonui Road, and the possibility of more bins being left at the roadside because of the subdivision. Mr Visser has requested that the rubbish trucks be required to enter the subdivision itself to empty the bins. This is more of a refuse management issue than a resource management one. The relevant Council department has been advised of Mr Visser's concerns.
- [177] This application was limited notified to the other legal users of the shared access. No parties identified the increased use of the rights of way as being an adverse effect. Mr Bennett is concerned about the use of the right of way around the northern edge of the site, but this right of way will only have three users (3 Chelivode Street, Lot 44 and Lot 53) and Rule 20.5.7(iv)(g) is not being breached. For these reasons, the proposal is not considered to have adverse cumulative effects on the functionality of the shared access.
- [178] As the site is not readily visible from public viewpoints, and the site is well landscaped, the proposal is not expected to have any cumulative effects on the landscape. Overall, the proposal will not have any cumulative effects which are considered to be minor or more than minor.

Sustainability (6.7.1)

- [179] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources. It also seeks to suitably manage infrastructure.
- [180] It is my opinion that the proposed subdivision will have effects on the amenity values and character of this area which are less than minor, given its position at the end of Orokonui Road and the former hospital use of the subject site. The subject site is not a typical rural property and the development of this land for large-lot residential use is not expected to adversely affect the amenity of the surrounding farm and nearby residential activities.
- [181] Because of its previous use as a hospital, the site has existing infrastructure and buildings, and is not ideal for rural productive use. For this reason, the on-going management of the site has been a challenge for the property owner. The development of this land with large lots for residential use, reutilising the former hospital buildings where possible, is considered to be sustainable use of the site and existing resources.
- [182] The subject site has an existing internal driveway which will be used for access by the majority of the new lots. Lots 44 and 53 will utilise another existing right of way. No upgrading of the existing accesses is considered necessary, although some

maintenance might be required. There is also existing privately-owned water and wastewater infrastructure managed by the Orokonui Service Company Ltd. The addition residential units are not expected to place undue demand of these services. There is, in any case, the option of self-servicing the new residential units although I expect all the new property owners will be expected to sign the service agreement included with the application which defines how the service infrastructure will operate. The proposal is considered to be sustainable use of the existing infrastructure.

- [183] Overall, I am off the opinion that the proposed subdivision and development will be sustainable use of Dunedin's physical and natural resources, particularly in respect of rural character and amenity, private infrastructure, and the use of existing resources. It will also be sustainable use of Council's services and roading infrastructure.

Positive Effects

- [184] The subject site is a former hospital with possible soil contamination issues arising from asbestos burial, lead paint, fuel tank/s, and fill from building demolition and other indefinite sources. The remediation of these areas is a very involved and potentially costly process. The proposed subdivision of the land into sites for residential use will provide finances to allow this land to be remediated, lot by lot, therefore improving the contamination situation.
- [185] The site is not a farm lot, and will not be suitable for farming use even if the subdivision is declined. The size of the property makes it difficult for one landowner to adequately manage, including the upkeep of the existing buildings. The proposed subdivision will allow more people to invest in the land and property, therefore increasing the likelihood of this former hospital to be used and developed appropriately. The maintenance and enhancement of the site will have positive effects on amenity values, the physical and natural resources of the land and existing structures, and the ability to deal with any contamination issues currently present on-site.

Summary

- [186] The proposed subdivision and residential development of the subject site will not have significant adverse effects in terms of its Rural zoning and rural character despite the fact that the applicant seeks to create significantly undersized Rural-zoned lots. The subject site currently has few rural values except for mature landscaping and wide spread buildings through the property. While the proposed development of the land will not reflect its Rural zoning, there is currently non-rural development on the site, and an existing consent to subdivide into large lots around the existing buildings.
- [187] The proposal should not have any cumulative effects on natural hazards. The residential development of the land is not expected to have any adverse effects on Council's roading and there is no Council-owned infrastructure to consider. The addition use of the privately-owned roading and services infrastructure is not expected to result in adverse effects which are more than minor.
- [188] The situation with the proposed tavern on Lot 41 is somewhat complicated by the historic consents for this activity which have been given effect. The tavern has the potential to have adverse effects on the residential development in the area, and currently, there is no real limit on the timeframe that the tavern can take to re-establish on this site. This application provides the Council with options for addressing the existing tavern consent, the effects of a tavern operating from this site, and the appropriateness of having a tavern at this location.

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

- [189] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is

currently operating under the Dunedin City District Plan, and the Proposed Second Generation District Plan has been notified. At the time of writing this report, decisions on the Proposed Plan hearings have yet to be released. The objectives and policies of both Plans have been taken into account. The following section of the report assesses the proposal against the relevant objectives and policies of both plans.

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The proposed subdivision and residential development of the new lots is not expected to adversely affect the amenity values of this part of Dunedin. The subject site is at the end of the road and has a non-productive rural history. The proposal is considered to be consistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	Council will not be providing any infrastructure. All roading and servicing for the subdivision is private. The existing infrastructure is considered to be adequate to serve the proposed development. Accordingly, I consider that the proposed subdivision is consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	There are no significant natural or physical resources that need to be protected. The site might be zoned Rural, but has few rural values except for landscaping. The high class soils are located in the region of proposed Lots 44 and 53. These sites have existing buildings, and any new development is unlikely to cover high class soils. The proposal is consistent with this objective and policy.
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The residential use of rural land is not considered to be incompatible with rural land use at an appropriate density, and houses are an expected component of the Rural zone. In this case, the subject site has no productive use. One submitter, however, is concerned about the residential use of a farm access. 4.5m yard spacing along external boundaries might not be appropriate. Therefore, the proposal is considered to be inconsistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	The proposal has been assessed using the protocol established between Auhaka and the Dunedin City Council. The proposal is considered to be consistent with this objective and policy.

Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	
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Rural/ Rural Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	This proposal will not facilitate the productive use of the Rural-zoned land. However, there is currently no productive use of this land, and the site has a long history of non-farming use. The high class soils are not currently used for farming, and this proposal will not result in the loss of any high class soils for productive use. The proposal is considered to be inconsistent with this objective and policies.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	
Policy 6.3.2	Sustain the productive capacity of the Rural zone by controlling the adverse effects of activities	
Policy 6.3.3	To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.	The proposal will subdivide a small Rural-zoned property into large residential lots, thereby fragmenting the rural land into non-productive land use. There is currently no rural-productive use of the land, so no loss of farm land is occurring. The proposed residential use is not considered to be inappropriate use of the existing buildings and new lots. The proposal is considered to be consistent with this policy.
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	This subject site is not a typical rural property, and currently has no rural use. The amenity values associated with this site are mature gardens and well-established institutional buildings, some of which have been converted to new uses (mostly residential). The proposed subdivision is not expected to have adverse effects on the rural character, even though the density of residential development will be much greater than the District Plan expects. There is existing infrastructure which, although privately owned and managed, will provide the new residences with urban infrastructure. The proposal is considered to be inconsistent with this objective and policy.
Policy 6.3.5	Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to: a) a predominance of natural features over human made features; b) high ratio of open space relative to the built environment; c) significant areas of vegetation in pasture, crops, forestry and indigenous vegetation; d) presence of large numbers of farmed animals; e) ... f) Low population densities relative to urban areas; g) Generally unsealed roads; h) Absence of urban infrastructure.	
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	The subject site is surrounded on its north, east and south by a large farm with no close residential dwelling. The western boundary is next to land which has recently been subdivided from the subject site. The proposal is not expected to have adverse effects on the amenity of adjoining properties. The proposal is considered to be consistent with this policy.
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	The proposed subdivision and development will sustainably manage the roading network and the private-services infrastructure. The traffic generated by the additional residential units is

Policy 6.3.8	Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	within the capacity of the existing roading, and no submitter has identified any concerns about the effects on private access. There will be no demand on urban infrastructure services. Accordingly, the proposal is considered to be consistent with this objective and policy.
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposals are considered to be inconsistent with this objective. The proposed residential activity is not expected to conflict with any of the adjoining rural activities but a 10.0m setback from the boundary is recommended. The neighbour also has concerns about the use of the shared access in light of the neighbouring farm use.
Policy 6.3.9	Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and on-site effluent disposal.	The proposed houses can all be self-serviced although there is private water supply and wastewater infrastructure available for use by the new lots. The proposal is considered to be consistent with this policy.
Policy 6.3.10	Protect areas that contain 'high class soils', as shown on the District Plan Maps 75, 76, and 77, in a way which sustains the productive capacity of the land.	There is only a small area of high class soils within the subject site, and this is not currently used for productive purposes. The proposal will not result in the loss of any high class soils or productive potential. The proposal is consistent with this policy.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activity is an expected component in the Rural Zone, although not on such small sites. Residential activity is not necessarily an adverse effect in itself. A tavern on this land might have adverse effects on neighbouring properties and the new residential lots. The proposal is considered to be inconsistent with this policy.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	The proposed subdivision is not expected to adversely affect rural amenity but one submitter is concerned about the possible conflict arising from shared use of the farm access. The proposal is considered to be inconsistent to this policy.
Policy 6.3.14	Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to: (a) amenity values. (b) rural character (c) natural hazards, (d) the provision of infrastructure, roading, traffic and safety, or (e)	It is my view that the subdivision and development the land will not have any cumulative effects in terms of the loss of productive land or rural character of the land which are more than minor. It will not have adverse cumulative effect in terms of infrastructure. Overall, the proposal is considered to be consistent with this policy.

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	The applicant has had a geotechnical report prepared for the proposed building sites not already occupied by a building. The geotechnical approval is accepted subject to a consent notice regarding development on land steeper than 15°. The proposal is expected to be consistent with this objective and policy.
Policy 17.3.2	Control buildings and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	There are no earthworks promoted specifically for this application. However, appropriate management of any excavations involving contaminated or potentially contaminated soils will be required. The proposal is considered to

Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	be consistent with this objective and policy.
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Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The subject site is an under-sized Rural-zoned site. No subdivision of this land is expected except for the subdivision already consented but not yet given effect to in full. This proposal is considered to be a coordinated subdivision to make use of a non-rural site with a long history of non-productive use. No further subdivision is anticipated. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.1	Avoid subdivisions that inhibit further subdivision activity and development.	
Policy 18.3.3	Allow the creation of special allotments that do not comply with the subdivision standards for special purposes.	There are no special allotments being created for special purposes.
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	There are no indications that this land is unsuitable for subdivision. Geotechnical information has been provided to determine that the vacant sites are suitable for development. This policy is concerned with process.
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	There are existing water supply and wastewater sewerage systems although these are privately owned and managed. The servicing of the proposed development is not expected to adversely affect adjoining land. The proposal is considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	No physical limitations preventing subdivision or development have been identified for this land. The proposal is expected to be consistent with this objective.
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The land has few productive land values. It is under-sized, undulating site with established access, buildings, landscaping and services. The subdivision of this land into large residential lots is not considered to compromise the potential use of the rural land resource. The proposal is considered to be consistent with this objective.
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	The subdivision consent application is being heard with the associated land use application for residential activity and the tavern.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The proposed subdivision will not impact negatively on the City's natural and physical resources and productive worth of the land. The proposal is considered to be consistent with this objective.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The proposed development will have no impact on Council infrastructure as the new lots will all utilise a private water supply and wastewater treatment system. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	

Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The disposal of foul effluent is already provided for by the private wastewater treatment plant. Stormwater is not expected to adversely affect adjoining land. The proposal is considered to be consistent with this policy.
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Transportation

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	Transport has assessed the proposed development as having no adverse effects on the transportation network of Orokonui Road or the rights of way. The access over private property is already formed and legal. The proposed subdivision does not require the construction of any new shared access although some maintenance of the existing access surfacing will be necessary. No legal user of the internal access has submitted in opposition to the proposal. One submitter has concerns about the standard and use of the existing right of way around to Lots 44 and 53. As an existing right of way, the access can legally be used by proposed Lots 44 and 53. The management of this access is a private matter between the parties. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Trees

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 15.2.1	Maintain and enhance the amenity and environmental quality of the City by encouraging the conservation and planting of trees.	There is only one scheduled tree on the subject site, and this will be retained as part of the subdivision and development proposals. It is to be contained within the no-build area of Lot 43, and will have no development in close proximity. As such, the proposal is considered to be consistent with these objectives and policies.
Objective 15.2.2	Protect Dunedin's most significant trees.	
Policy 15.3.1	Ensure that landowners and developers are aware of the environmental benefits of trees and encourage them to conserve trees and undertake new plantings whenever possible.	
Policy 15.3.2	Identify and protect trees that make a significant contribution towards amenity and environmental quality.	

Proposed Plan

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

Strategic Directions

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 2.2.1	The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is	The Proposed Plan shows the eastern side of the subject site to be at risk of coastal inundation although the site is elevated above

	minimised so that the risk is no more than low.	sea level. The northern end is lower than the southern. The lots at the lower end of the subject site are already developed except for proposed Lot 43. Council's Consulting Engineer has not identified any concerns about coastal flooding for this land. An appropriate floor level will need to be set at the time of building consent for any new development on Lot 43. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.1.3	Identify areas with risk from terrestrial flooding, and include these in hazard (flood) overlay zones as follows: 1. ... 2. in the hazard 2 (flood) overlay zone, include areas in a flood plain or alluvial fan where there may be a moderate risk to people, to property, and of transference or exacerbation of risk elsewhere; 3. ...	
Policy 2.2.1.7	In the hazard overlay zones, provide for more lenient rules on the expansion of existing activities in acknowledgement of the pre-existing financial investment and other operational ties in a site.	The subject site is a former hospital with existing buildings and infrastructure. The proposed subdivision will utilise the existing services and access, and the smaller lots will make the subdivision more financially viable. The proposal is considered to be consistent with this policy.
Objective 2.2.4	Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.	The proposal is considered to be a non-productive rural site with existing buildings and infrastructure. The development is in proximity to the Waitati township, and will help support the community. The proposal is considered to be consistent with this objective.
Policy 2.2.4.4	Avoid subdivision that provides for residential activity of a fundamentally different type than provided for in the various zones, through: 1. rules that prevent rural residential or urban-scale residential living in rural zones; 2. rules that prevent urban-scale residential living in a rural residential zone; 3. rules in urban environments, that require the density of residential activity to reflect the existing or intended future character of the residential area; and 4. rules that do not provide for family flats, that are provided solely to allow extended or large families to live together, to be converted into primary residential units through subdivision or other means.	The proposal does not avoid the subdivision of Rural-zoned land into residential sites which are different to that intended by the zoning. The proposal is considered to be contrary to the rules of the Proposed Plan for the Rural-Coastal zone.
Objective 2.2.5	Development in the city is designed to reduce environmental costs and adverse effects on the environment as much as practicable, including energy consumption, water use, and the quality and quantity of stormwater discharge.	The proposed subdivision and development will utilise existing private infrastructure. It will not increase environmental costs or adverse effects on the environment. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.5.2	Enable and encourage on-site stormwater and wastewater management, where not in conflict with the efficient use of existing infrastructure, through rules that provide for an alternative to connecting to reticulated infrastructure.	

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as	The proposal is considered to be consistent with this objective. No new roading infrastructure (public or private) is required for this subdivision proposal.

	practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development is not expected to have any adverse effects on the public roading network.
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	The use of an existing right of way for access to Lots 44 and 53 is not supported by the servient tenement for safety reasons. The proposal does not change the existing use, however, as the apartment on Lot 44 and the dwelling or workshop of Lot 53 has historically used this access.
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	The proposal is considered to be consistent with this objective and these policies.
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport network.	
Objective 6.2.4	Parking areas, loading areas and vehicle accesses are designed and located to: 1. provide for the safe and efficient operation of both the parking or loading area and the transport network; 2. facilitate the safe and efficient functioning of the transport network and connectivity for all travel methods.	The parking, loading and access for the propose lots is not expected to have any adverse implications for the safe and efficient operation of the transportation network. The proposal is considered to be consistent with this objective.
Policy 6.2.4.2	Require all driveways to be designed to ensure: 1. the surfacing and gradient of the driveway allows it to be used safely and efficiently; 2. that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. 3. the width of the driveway is sufficient to allow the type and number of vehicles likely to be using it to do so safely and efficiently; and 4. sufficient distance is provided between shared driveways and dwellings.	The internal access of the subdivision is formed to at least 5.0m width and is hard surfaced. Apart from some maintenance work required, the access is considered to adequately and safely serve the new lots. The driveway is considered to meet all these policy goals. Accordingly, the proposal is considered to be consistent with this proposal.

Scheduled Trees

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 7.2.1	The contribution made by significant trees to the visual landscape and history of neighbourhoods is maintained.	The existing listed oak tree will be located within the no-build area on Lot 43. There is no intent to remove the tree, or build within close proximity to the tree. Accordingly, there should be no expectation of damage to the tree. The proposal is considered to be consistent with this objective and policy.
Policy 7.2.1.4	Require earthworks, network utilities activities, new roads and additions and alterations to roads, buildings, structures, and site development that involves the laying of an impermeable surface, to be set back from a scheduled tree an	

	adequate distance to avoid: 1. damage to the scheduled tree; and 2. potential future adverse effects caused by the tree on amenity values, structural integrity of buildings or infrastructure, or safety that may lead to future demand to remove the tree.	
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Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The proposed subdivision and residential development will not utilise public services, nor will they result in pressure to provide public services. The new lots will have access to a privately owned and managed water supply and wastewater drainage systems. The proposal is considered to be consistent with this objective and policy.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposal is to subdivide an existing undersized rural site that has not had rural use for many years. The proposal will assist in ensuring the site is maintained in the future. The proposal is considered to maintain people's health and safety. The proposal is considered to be consistent with this objective.
Policy 9.2.2.7	Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public infrastructure where the land use, development or the size and shape of resultant sites from a subdivision, ensure wastewater and stormwater can be disposed of in such a way that avoids adverse effects on the health of people on the site or on surrounding sites or, if avoidance is not possible, ensure any adverse effects would be insignificant.	There is no public infrastructure in this location available for connection. The proposed lots will all be large enough for self-servicing of water supply and effluent disposal, but do not need to do so as there is privately owned and managed water supply and wastewater drainage available for the subject site. The proposal is considered to be consistent with this policy.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	The subject site has stored tank water on the neighbouring farm property which is available for water supply and fire-fighting. The proposal is considered to be consistent with this policy.

Natural Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 11.2.1	The risk from natural hazards, including climate change, is minimised, in the short to long term.	The risk to the new lots and properties from coastal flooding is not expected to adversely affect the subject site or new lots. The proposal

		is considered to be consistent with this objective.
Policy 11.2.1.3	In the hazard 1 and 2 overlay zones, only allow new buildings, and additions and alterations to buildings, where the scale, location and design of the building or other factors mean risk is avoided, or is no more than low.	Council's Consulting Engineer requires proposals to build on slopes steeper than 15° to have specific geotechnical investigation to confirm the site is stable. Most of the sites at the lower end of the subject site are already developed. The proposal is considered to be consistent with these policies.
Policy 11.2.1.5	In the hazard 2 overlay zones, only allow the establishment of sensitive activities where the scale, location and design of the activity or other factors means risk is avoided, or is no more than low.	
Policy 11.2.1.8	In the hazard 1 and 2 (flood) and hazard 3 (coastal or flood) overlay zones, require new buildings intended for sensitive activities to have a floor level that mitigates risk from flooding (including coastal flooding) and rising groundwater so that risk is no more than low.	Floor level for new development on Lot 43 and the other sites will be set by Building Control at the time of building consent application. On the basis of known information, the proposal is considered to be consistent with this policy.

Rural Zones

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	The subdivision does not seek to reserve the Rural zone for productive rural activities. The proposed housing is not associated with the rural productive worth the land and high class soils. Accordingly, the proposal is considered to be contrary with this objective.
Policy 16.2.1.5	Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	The proposal will create eleven significantly undersized Rural - Coastal sites. The new lots will not reflect the rural zoning in any way and does not support farming activity on the subject land. The proposal is considered to be contrary to this policy.
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	The existing subdivision of SUB-2012-66 approved the subdivision of existing buildings (for residential use) onto their own lots. Although not filling the requirements for a 'surplus dwelling subdivision', the intent was largely the same in that the buildings were to be subdivided into manageable sites. This proposal will increase the number of new lots and create new residential units. The proposal is considered to be contrary to this policy.
Objective 16.2.2	The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: 1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised; 2. the residential character and amenity of adjoining residential zones is maintained; and 3. a reasonable level of amenity for	The residential activity is not expected to create conflict with the neighbouring farm activity except that one submitter is concerned about the shared use of the existing right of way. Council has limited means to address this, particularly as there is historical use of this access for the apartment and former house on proposed Lot 53. The proposed tavern could be in conflict with residential activity. The proposal is considered to be inconsistent with this objective.

	residential activities in the rural zones.	
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The yards are to be reduced to a minimum of 4.5m for new development. Existing development will have, or already has, smaller setbacks. In light of the zoning, the propose is considered to be inconsistent with this policy although there is no expectation of loss of amenity for adjoining properties arising from the yards.
Objective 16.2.3	The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; b) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c) buildings that are rural in nature, scale and design, such as barns and sheds; d) a low density of residential activity, which is associated with rural activities; e) a high proportion of land containing farmed animals, pasture, crops, and forestry; f) significant areas of indigenous vegetation and habitats for indigenous fauna; and g) other elements as described in the character descriptions of each rural zone located in Appendix A7.	The proposed subdivision will intensify the density of development of this part of the Rural – Coastal zone to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to that consistent with a large-lot residential suburb but will retain much of the mature landscaping on the subject site. The residential activity of the new lots will not be associated with rural activity, but it is not expected to adversely impact on rural amenity. The proposal is considered to be inconsistent with this objective.
Policy 16.2.3.1	Require buildings, structures and network utilities to be set back from boundaries and identified ridgelines, and of a height that maintains the rural character values and visual amenity of the rural zones.	The proposal will not maintain the rural character and amenity expected of the Rural-Coastal zone but will not adversely affect the character and amenity of this particular site. There new dwellings are not expected to impact on the visual amenity of the area as they will be difficult to see. The subject site is not a rural productive property. The proposal is considered to be inconsistent with this objective and policy.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	
Policy 16.2.3.8	Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.	The subdivision is not considered to maintain or enhance the rural character and visual amenity of the zone. The proposal is inconsistent with this policy.

[190] As the decisions on the Proposed Plan have not been released, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan. While I have assessed the proposal under the Residential objectives and policies of both Plans, given that the proposal is for a residential subdivision in nature, the Rural objectives and policies have been given greater weighting as this is the applicable zoning under both Plans. I note that the decisions on the Proposed Plan are due out on 7 November 2018. It may be prudent for the Committee to consider promptly issuing the decision prior to the release of the decisions to avoid the additional complexity to assessment of the application that may arise.

[191] It is my view that the proposal is generally consistent with the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, transportation, sustainability, hazards, health and safety, and strategic directions. However, it is inconsistent with those relating to conflict and reverse sensitivity, mixing of activities, the protection of high class soils, and rural amenity. Furthermore, it is considered to be contrary to the Proposed Plan objectives

and policies that address rural productive worth, land fragmentation, and rural character and amenity, and density.

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

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

- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.2: Economic wellbeing.
- Policy 1.1.3 Social and cultural wellbeing and health and safety.
- Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
- Policy 3.1.3: Water allocation and use.
- Policy 3.1.7: Soil values.
- Objective 3.2: Otago's significant and highly values natural resources are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way.
- Policy 4.3.1: Managing infrastructure activities.

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

- Objective 5.3: Sufficient land is managed and protected for economic production;
- Policy 5.3.1: Rural activities.

7. DECISION MAKING FRAMEWORK

Part II Matters

[195] Given there is no ambiguity, incompleteness or illegality in the operative Dunedin City District Plan, it may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below, and in my opinion, there is inconsistency or a degree of conflict with Part II stemming from the proposed development of the Rural-zoned land for residential activity of a low urban density.

[196] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:

- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
- 5(2)(b) "Safeguarding the life-supporting capacity of air, water soil and ecosystems;

- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",
- 7(b) "The efficient use and development of natural and physical resources";
- 7(c) "The maintenance and enhancement of amenity values";
- 7(f) "Maintenance and enhancement of the quality of the environment"; and
- 7(g) "Any finite characteristics of natural and physical resources".

- [197] With regard to Section 5(2)(a), it is considered that the proposed subdivision and residential development will sustain the potential of natural and physical land resource. The site has a long history of non-productive institutional use. The high class soils on-site are not used for productive purposes. This proposal does not result in loss of rural productive land or high class soils from productive use.
- [198] With regard to Section 5(2)(b), it is considered that the proposed subdivision will not safeguard the life-supporting capacity of the high class soils, but there will be no removal of high class soils from production as they are currently not used productively.
- [199] With regard to Section 5(2)(c), it is considered that the proposed subdivision will not have adverse effects on the landscape and the rural environment. The subject site is not readily visible from public viewpoints, and will retain much of its mature landscaping.
- [200] With regard to Section 7(b), it is considered that the proposed subdivision will be the efficient use of the former hospital buildings and grounds. The site is not a rural property despite its zoning, and has existing infrastructure which will be reused and enhanced as part of this proposal.
- [201] With regard to Section 7(c), it is considered that the proposed subdivision will not adversely affect the amenity values of the Rural zone in this location. The subject site is well landscaped and already developed.
- [202] With regard to Section 7(f), it is considered that the proposed subdivision will not change the quality of the environment significantly. The proposal is unlikely to result in any major change to the rural character in this location.
- [203] With regard to Section 7(g), it is considered that the proposal will maintain the finite resource of the high class soils. The high class soils will not be removed from the site, and are unlikely to be covered by any new development.

Section 104

- [204] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment would be minor in terms of rural character, amenity values, transportation, infrastructure, and natural hazards. There is the potential for the proposed tavern to create conflict with neighbouring activities.
- [205] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the proposal is generally consistent with many objectives and policies of the Plans; however, it is inconsistent with those relating to conflict and reverse sensitivity, mixing of activities, the protection of high class soils, and rural amenity. Furthermore, it is considered to be contrary to the Proposed Plan objectives and policies that address rural productive worth, land fragmentation, and rural character and amenity, and density.
- [206] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [193] and [194] of this report it was concluded that the application is consistent with many of the relevant objectives and

policies of the Regional Policy Statement for Otago regarding the management of natural and physical resources to support the wellbeing of people and communities, but inconsistent with those to do with economic production and rural activities.

- [207] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

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

- [209] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:

"...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan."

- [210] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an 'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

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

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

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

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

"Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition

that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined."

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

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

- [215] The applicant considers that:

'... this proposal is non-complying because of the present rural zoning even though the site has longstanding history as providing for residential type land uses. Though the hospital operation has ceased, the remaining infrastructure and built environment supports the continued use and development of this site for residential activities while its presence on the fringe of an established township provides for compatibility in its wider environment.'

- [216] I agree that the situation of the subject site is unusual. It has been separated from the farm land of the original site many years ago, leaving the hospital buildings and infrastructure on a small rural property. The existing buildings are scattered throughout the site, and the shared driveway is hard surfaced with a footpath. There is reticulated water supply and wastewater drainage. The site does not reflect a rural productive property, nor a site notable for its vegetation and rural amenity values. The declining of consent, should that occur, will not lead to the site reverting to productive farm land as the topography and existing occupation are not conducive to farming activity. There is an existing subdivision consent to subdivide the former hospital buildings onto separate sites. I consider the site and its history to be a true exception in this case which would allow the subdivision of Rural-zoned land without setting an undesirable precedent.

Non complying status (s104D)

- [217] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.
- [218] It is my opinion that the subdivision and development of this subject site will have minor adverse effects on the rural amenity and character of this site, and the natural and physical resource of the property. In respect of the objectives and policies of both Plans, the proposal is considered to be consistent to the majority of the objectives and policies of both plans, inconsistent with a number of objectives and policies regarding conflicting activities, residential development of rural land, and rural productivity. It is contrary to the objectives and policies of the Rural Section of the Proposed Plan.
- [219] Overall, in my opinion, the proposed subdivision and development of the subject site will meet the effects branch of the section 104D test. As a consequence, the Committee can consider granting consent to the proposal. While contrary to some

objectives and policies, these are in respect of the Proposed Plan which is not yet in effect or operative except in regards to certain rules to do with rural lot sizing.

8. RECOMMENDATION

Subdivision SUB-2018-63

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan and Proposed Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants** consent to the **non-complying** activity being the staged subdivision of the land subject to the NES legally described as Lot 100 DP 506797 (CFR 768400) at 90 Orokonui Road, into a total of eleven residential lots.

That the esplanade strip requirement for the waterway through 90 Orokonui Road, Waitati (Lot 100 DP 506797 (CFR 768400)), as required by sections 77 and 230 of the Resource Management Act 1919 and the Dunedin City District Plan Rule 18.5.5, be waived in full for the subdivision consent SUB-2018-63 and any subsequent subdivision proposal involving this section of waterway.

Land Use LUC-2018-347

(Should consent be granted, it is appropriate that the land use for different stages of the subdivision, and the reissuing of consent for the tavern, be given unique land use numbers. For the purposes of this report, the one land use number has been used for all components of the consent with the relevant lot number shown in brackets and the tavern consent as [T] to differentiate between the stages and tavern.)

That, pursuant to sections 34A(1) and 104B of the Resource Management Act 1991, and having regard to Part II matters and sections 104 and 104D, the Dunedin City Council **grants** consent to a **non-complying** activity being:

[Lot 41 or the balance land of other stages]:

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
- Residential activity (one unit only) within the hall building or a new residential dwelling;
- The above residential activity of future Lot 41 SUB-2018-63 where forming part of the balance land of all stages of SUB-2018-63;
- The residential activity within existing buildings (coinciding with the residential units of Lots 42, 44, 53, 61 and 81 SUB-2018-63 (one residential unit each) but not new builds) while part of the balance land;

[Lot 42]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
- Residential activity (one unit only) within the chapel building or a new residential dwelling;

[Lot 43]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
- Residential activity (one unit only) in a new residential dwelling;

[Lot 44]

- *The disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*
- *Residential activity (one unit only) within the main existing residential dwelling or replacement building;*
- *An associated residential activity (family flat) within the existing one-bedroom apartment.*

[Lot 51]

- *Residential activity (one unit only) in a new residential dwelling;*

[Lot 52]

- *Residential activity (one unit only) in a new residential dwelling;*

[Lot 53]

- *Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*
- *Residential activity (one unit only) in either an existing building or a replacement building;*

[Lot 61]

- *Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*
- *Residential activity (one unit only) within the existing building or a replacement building;*

[Lot 71]

- *Residential activity (one unit only) within a new residential dwelling;*

[Lot 81]

- *Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*
- *Residential activity (one unit only) within the existing building or a replacement building;*

[Lot 82]

- *Residential activity (one unit only) within a new residential dwelling.*

[Tavern]

- *The re-establishment of a commercial activity (tavern) within the existing hall (whether on Lot 100 DP 506797 (CFR 768400), Lot 41 SUB-2018-63, or the balance land of any stage of SUB-2018-63);*

at 90 Orokonui Road, Waitati, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.

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

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of the subject site will be minor for the following reasons:
 - a) The subject site is a small rural property with existing occupation and a history as an institutional site. It has not been a productive farm property for many years, and the proposed subdivision and residential development will not result in the loss of farm land. Even if the consent does not proceed, it is unlikely that this land will ever revert to rural productive or amenity land. The subject site is not characteristic of sites within the Rural zone.
 - b) There is an existing staged subdivision consent, SUB-2012-66/2/a, for the subdivision of the land around the existing buildings, and for the residential use of these buildings. The creation of small Rural-zoned sites, and residential activity at a density not anticipated by the District Plan, is therefore already expected by this site. This proposal will provide for smaller sites and more houses, but will not introduce residential activity as an entirely new activity, nor reduce productivity on this subject site.
 - c) Parks and Recreation Services has not identified any reason to require an esplanade strip through the subject site. The subject watercourse has none of the values outlined in section 229 of the Resource Management Act 1991. The matter was previously considered in 2000 by the Department of Conservation, and again in 2012 by the Hearings Committee, with neither party seeing any apparent benefit in an esplanade strip in this location.
 - d) The portion of the subject site covered in high class soils is not currently farmed and is partially covered by existing buildings. The proposed subdivision will have no impact on the viability or use of these soils as there is currently no use, or obvious potential use, of the high class soils. The proposed subdivision will not make the situation with the high class soils any worse than it is currently, and as such, the proposed subdivision will have no adverse effects on the physical high class soils resource.
 - e) The proposal is not expected to have cumulative effects. The site is large for a predominantly residential use, and the existing buildings are scattered throughout the site. The proposal will not increase the number of residential units on-site to a point where the site loses its low-density, landscaped, rural-residential feel. There will be no adverse cumulative effects on traffic generation, or services.
 - f) The subdivision of the land into smaller residential lots will make the development more attractive to potential owners. This will assist the applicant in raising the finances necessary to deal with potential soil contamination issues around the existing buildings, therefore improving the state of the environment. There will also be more residents sharing any burden of maintenance of existing infrastructure.
2. The former hospital use of the subject site has resulted in a site with existing development and infrastructure that cannot be used for most rural activities but is large for a residential property. The site has had no rural use for many years. I consider that the history and existing development of the subject site is an exceptional circumstance which would allow the subdivision of Rural-zoned land into significantly undersized lots for residential use without there being a risk of setting an undesirable precedent.

3. The proposal meets one branch of section the 104D test. The Committee is in a position to consider the granting of consent to the subdivision.
4. The former tavern has existing land use consents which, because the original consent has been given effect to, means that the tavern can be re-established at any time. The proposed subdivision will create a new site, and Council practice is to reauthorise existing land use consents in terms of the new site. In this case, it is my recommendation to reconsider the use of the site by the tavern, and to address the effects of this activity either through new conditions, cancellation of the existing consent, or by the surrender of the consent.

Report prepared by:

Report checked by:



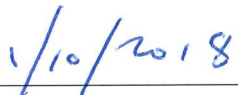
Lianne Darby
Planner



Date



John Sule
Senior Planner



Date

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

The stages of consent can be given effect to in any order. Lot 41 will be created by the last stage. It will also form part of the balance land at each stage prior to the final stage.

The conditions of each stage deal with:

- a) the works required for the specific lot;
- b) the works required for Lot 41 if this is the last stage;
- c) the works required for the balance land if this is not the last stage.

DRAFT RECOMMENDED CONDITIONS: Subject to change.

Subdivision SUB-2018-63

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan and Proposed Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants** consent to the **non-complying** activity being the staged subdivision of the land subject to the NES legally described as Lot 100 DP 506797 (CFR 768400) at 90 Orokonui Road, into a total of eleven residential lots, subject to conditions imposed under sections 108 and 220 of the Act, as follows:*

That the esplanade strip requirement for the waterway through 90 Orokonui Road, Waitati (Lot 100 DP 506797 (CFR 768400)), as required by sections 77 and 230 of the Resource Management Act 1919 and the Dunedin City District Plan Rule 18.5.5, be waived in full for the subdivision consent SUB-2018-63 and any subsequent subdivision proposal involving this section of waterway.

Stage A – Subdivision creating Lot 42 and balance land:

1. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 42 Orokonui Estate The Chapel,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
2. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 42 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*

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

Lot 42 conditions:

- a) That a detailed site investigation of areas within Lot 42 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing buildings; and/or the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.
- b) The works, if any, identified by the report of condition 3(a) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.
- c) Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.
- d) That a plan must be prepared showing the boundaries of Lot 42 and the existing chapel building. The plan must show the no-build area as depicted on the application plan for Lot 42, and must be clearly labelled as 'no build area'. A line 4.5m from the site boundaries in all other locations must be shown and labelled 'setback line'. The plan must be attached to the consent notice of condition 3(e) below.
- e) That a consent notice must be prepared for registration on the title of Lot 42 for the following on-going condition:
 - (i) No structures must be constructed within the 'no-build area' as shown on the attached plan. Any new building on this site must be built outside of the no-build area and inside the 4.5m setback distances, or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'
- f) An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.
- g) That if there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must be cancelled.

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- h) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- i) *The works, if any, identified by the report of condition 3(h) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- j) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- k) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 3(l) below.*
- l) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- k) *A plan must be prepared showing the areas of future Lots 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice of condition 3(l) below.*
- l) *That, a consent notice must be prepared for registration on the balance land for the following on-going condition:*

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage B – Subdivision creating Lot 43 and balance land:

- 4. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 43 Orokonui Estate,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*

5. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
- a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 43 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
6. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 43 conditions:

- a) *That a detailed site investigation of areas within Lot 43 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing buildings; and/or the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- b) *The works, if any, identified by the report of condition 6(a) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- c) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- d) *That a plan must be prepared showing the boundaries of Lot 43 and the no-build area on this lot which must be clearly labelled as 'no build area'. A line 4.5m from the site boundaries in all other locations must be shown and labelled 'setback line'. The plan must be attached to the consent notice of condition 6(e) below.*
- e) *That a consent notice must be prepared for registration on the title of Lot 43 for the following on-going condition:*
 - (i) *No structures must be constructed within the 'no-build area' as shown on the attached plan. Any new building on this site must be built outside of the no-build area and inside the 4.5m setback distances, or resource consent will be required. The setback distances shown on*

this diagram shall override the setbacks or yards specified in the District Plan for this zone.'

- f) *The right of way over 3 Chelivode Street from the entranceway to the subject site (the northwest corner of proposed Lot 43) to the driveway into Lot 43 must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing.*
- g) *That if there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must be cancelled.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- h) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- i) *The works, if any, identified by the report of condition 6(g) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- j) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- k) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 6(l) below.*
- l) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- m) *A plan must be prepared showing the areas of future Lots 42 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these*

areas of the balance land must not be built on. The plan must be attached to the consent notice of condition 6(n) below.

- n) That, a consent notice must be prepared for registration on the balance land for the following on-going condition:*

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage C – Subdivision creating Lot 44 and balance land:

- 7. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 44 The Villa Orokonui Estate,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
- 8. That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - c) That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled.*
 - d) That if the existing sewage pumping line through this site is to be re-routed, then the existing easement for this pipe is to be cancelled, and a new easement created in accordance with the requirements of the Dunedin Code of Subdivision and Development 2010.*
- 9. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 44 conditions:

- a) That a detailed site investigation of areas within Lot 44 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and/or the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- b) The works, if any, identified by the report of condition 9(a) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*

- c) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- d) *That a plan must be prepared showing the boundaries of Lot 44 and the existing buildings. The plan must show the no-build area as depicted on the application plan for Lot 44, and must be clearly labelled as 'no build area'. A line 4.5m from the site boundaries in all other locations must be shown and labelled 'setback line'. The plan must be attached to the consent notice of condition 9(e) below.*
- e) *That a consent notice must be prepared for registration on the title of Lot 43 for the following on-going condition:*
 - (i) *No structures must be constructed within the 'no-build area' as shown on the attached plan. Any new building on this site must be built outside of the no-build area and inside the 4.5m setback distances, or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
- f) *The right of way over 3 Chelivode Street from the driveway into proposed Lot 43 up to the apartment on Lot 44 must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing.*
- g) *That if there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must be cancelled.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- h) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- i) *The works, if any, identified by the report of condition 9(h) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- j) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*

- k) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 9(l) below.*
- l) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- m) *A plan must be prepared showing the areas of future Lots 42 and 43 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice of condition 9(n) below.*
- n) *That, a consent notice must be prepared for registration on the balance land for the following on-going condition:*

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'
- o) *That, if necessary, the existing sewage pipe through this site must be rerouted so as to lie within any new easement created by condition 8(d) above.*

Stage D – Subdivision creating Lot 51 and balance land:

- 10. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 51 Orokonui Estate,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
- 11. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 51 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*

- d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
12. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 51 conditions:

- a) *That a plan must be prepared showing the boundaries of Lot 51 and the building platform for this lot. The plan must be attached to the consent notice of condition 12(b) below.*
- b) *That a consent notice must be prepared for registration on the title of Lot 51 for the following on-going condition:*
- (i) *'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'*
- c) *An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- d) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- e) *The works, if any, identified by the report of condition 12(d) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- f) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- g) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 12(h) below.*

- h) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- h) *Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage E – Subdivision creating Lot 52 and balance land:

13. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 52 Orokonui Estate,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
14. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 52 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*

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

Lot 52 conditions:

- a) *That a plan must be prepared showing the boundaries of Lot 52 and the building platform for this lot. The plan must be attached to the consent notice of condition 15(b) below.*
- b) *That a consent notice must be prepared for registration on the title of Lot 52 for the following on-going condition:*
 - (i) *'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'*
- c) *An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- d) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- e) *The works, if any, identified by the report of condition 15(d) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- f) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- g) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 15(h) below.*
- h) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

h) *Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage F – Subdivision creating Lot 53 and balance land:

16. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 53 Orokonui Estate The Hall,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
17. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - c) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
18. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 53 conditions:

- a) *That a detailed site investigation of areas within Lot 53 where there is known burial of contaminated materials; the land where development is*

proposed; the curtilage of existing residential buildings; and/or the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report must be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.

- b) The works, if any, identified by the report of condition 18(a) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- c) Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- d) That a plan must be prepared showing the boundaries of Lot 53 and the existing buildings. Setback lines must be shown in relation to the boundaries of the lot. Where the lot abuts 3 Chelivode Street, the setback line must be at least 10.0m from the boundary. Elsewhere, the setback line can be 4.5m from the boundary. The setback lines must be clearly labelled. The plan must be attached to the consent notice of condition 18(e) below.*
- e) That a consent notice must be prepared for registration on the title of Lot 53 for the following on-going condition:*
 - (i) Any new building on this site must be built inside the setback lines or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
- f) The right of way over 3 Chelivode Street from the apartment on Lot 44 to the barn on Lot 53 must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- g) That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- h) The works, if any, identified by the report of condition 18(g) above, must be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*

- i) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- j) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 18(k) below.*
- k) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- h) *Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage G – Subdivision creating Lot 61 and balance land:

- 19. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 61 Orokonui Estate The Therapy Building,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
- 20. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*

- b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 61 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
21. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
- Lot 61 conditions:*
- a) *That a detailed site investigation of areas within Lot 61 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and/or the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report must be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
 - b) *The works, if any, identified by the report of condition 21(a) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
 - c) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
 - d) *That a plan must be prepared showing the boundaries of Lot 61 and the existing buildings. Setback lines must be shown in relation to the boundaries of the lot. Where the lot abuts 3 Chelivode Street, the setback line must be at least 10.0m from the boundary. Elsewhere, the setback line can be 4.5m from the boundary. The setback lines must be clearly labelled. The plan must be attached to the consent notice of condition 21(e) below.*
 - e) *That a consent notice must be prepared for registration on the title of Lot 61 for the following on-going condition:*
 - (i) *Any new building on this site must be built inside the setback lines or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
 - f) *An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the*

northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- g) That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- h) The works, if any, identified by the report of condition 21(f) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- i) Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- j) That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 21(k) below.*
- k) That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- h) Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage H – Subdivision creating Lot 71 and balance land:

22. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 71 Orokonui Estate The Tennis Court,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
23. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 42 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
24. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 71 conditions:

- a) *That a plan must be prepared showing the boundaries of Lot 71. Setback lines must be shown at least 4.5m from all boundaries and be clearly labelled. The plan must be attached to the consent notice of condition 24(b) below.*
- b) *That a consent notice must be prepared for registration on the title of Lot 71 for the following on-going condition:*
 - (i) *Any new building on this site must be built inside the setback lines or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
- c) *An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the*

northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- d) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- e) *The works, if any, identified by the report of condition 24(d) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- f) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- g) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 24(h) below.*
- h) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- i) *Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage I – Subdivision creating Lot 81 and balance land:

25. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 81 Orokonui Estate The Female-2 Villa,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
26. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 81 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*
27. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*

Lot 81 conditions:

- a) *That a detailed site investigation of areas within Lot 81 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and/or the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report must be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- b) *The works, if any, identified by the report of condition 27(a) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- c) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site*

has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.

- d) That a plan must be prepared showing the boundaries of Lot 81 and the existing buildings. Setback lines must be shown in relation to the boundaries of the lot. Where the lot abuts 3 Chelivode Street, the setback line must be at least 10.0m from the boundary. Elsewhere, the setback line can be 4.5m from the boundary. The plan must be attached to the consent notice of condition 27(e) below.*
- e) That a consent notice must be prepared for registration on the title of Lot 81 for the following on-going condition:*
 - (i) Any new building on this site must be built inside the setback lines or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
- f) An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- g) That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; shall be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report shall be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- h) The works, if any, identified by the report of condition 27(g) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- i) Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- j) That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 27(k) below.*

- k) *That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:*

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- j) *Either:*

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Stage J – Subdivision creating Lot 82 and balance land:

28. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 82 Orokonui Estate,' (and 'Lot 41 Orokonui Estate – The Hall' if Lot 41 is the balance land) and the accompanying information submitted as part of SUB-2018-63 received at Council on 28 June 2018, except where modified by the following:*
29. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
- a) *That if a requirement for any easement for services is incurred during the survey, then those easements must be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way must be duly created or reserved over the balance land along the shared accessway in favour of Lot 82 as necessary to provide full access, and must be shown on the survey plan in a Memorandum of Easements. The right of way must have a minimum legal width of 6.0m.*
 - c) *That, if the balance land is comprised of several parcels, these parcels must be amalgamated into one site. The wording of the amalgamation condition must be submitted to Council's Subdivision Planner for approval at least ten days before the application for s223 certification is lodged at Council.*
 - d) *That, if so desired, the easements of Transfer 937406.5 shall be cancelled in part, as appropriate, where not required in respect of the new lots, and shall be shown on the plan in a Schedule of Easements to be Cancelled*

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

Lot 82 conditions:

- a) *That a plan must be prepared showing the boundaries of Lot 82. Setback lines must be Where the lot abuts 3 Chelivode Street, the setback line must be at least 10.0m from the boundary. Elsewhere, the setback line can be 4.5m from the boundary. The plan must be attached to the consent notice of condition 30(b) below.*
- b) *That a consent notice must be prepared for registration on the title of Lot 82 for the following on-going condition:*
 - (i) *Any new building on this site must be built inside the setback lines or resource consent will be required. The setback distances shown on this diagram shall override the setbacks or yards specified in the District Plan for this zone.'*
- c) *An 85.0m length of the right of way over the balance land must be upgraded or repaired so as to be at least 5.0m formed width and hard surfaced with a good standard of surfacing. The section to be upgraded or repaired must be measured from either the entranceway to the site (the northwest corner of proposed Lot 43) or the upper limit of the previous section if this is not the first section of the right of way to be upgraded.*

[Either the 'Lot 41 conditions' or the 'balance land conditions' will apply, but not both. The conditions which apply will depend on whether or not Lot 41 is the balance land or part of the balance land.]

Lot 41 conditions:

- d) *That, if Lot 41 is the balance area of this stage, then a detailed site investigation of areas within Lot 41 where there is known burial of contaminated materials; the land where development is proposed; the curtilage of existing residential buildings; and the sites of fuel tanks and/or boiler houses; must be undertaken by a suitably qualified person to determine the distribution and composition of soil contamination (if any) present. The report must be submitted to the Council for its records. The report shall, if applicable, advise on the mitigation measures necessary to successfully remediate or manage the land in order for it to be used without danger to human health.*
- e) *The works, if any, identified by the report of condition 30(d) above, shall be undertaken to the satisfaction of Council, so as to ensure that the land around buildings can be used for residential activity without danger to human health.*
- f) *Following completion of the remediation works, a Site Validation report must be prepared by a suitably qualified person to confirm that the site has been remediated to an acceptable state in terms of the NES provisions. The report must be submitted to the Council for approval.*
- g) *That, if Lot 41 is the balance area of this stage, then a plan must be prepared showing the residential and utility building platforms in relation to the existing buildings and site boundaries. The building platforms must be clearly labelled as appropriate. The plan must be attached to the consent notice of condition 30(h) below.*

- h) That, if Lot 41 is the balance area of this stage, then a consent notice must be prepared for registration on the title of Lot 41 for the following on-going condition:

'Any new residential building on this site must be constructed fully within the 'residential building platform' as shown on the attached plan, unless further resource consent is required.'

Balance land conditions:

- h) Either:

If there is an existing consent notice on the subject site of this stage relating to the no-build area at the northwest end of the subject site, then this consent notice must carry down onto the new title of the balance land.

Or:

A plan must be prepared showing the areas of future Lots 42, 43 and 44 (where these future lots form part of the balance land) which are to be 'no-build areas', and the lawn area on future Lot 41 to the west of the hall building. The plan must be clearly labelled so as to indicate that these areas of the balance land must not be built on. The plan must be attached to the consent notice detailed below.

That, a consent notice must be prepared for registration on the balance land for the following on-going condition:

'In order to protect the landscaping at the north-western end of this site from development, no buildings must be constructed within the area shown on the attached plan as being no-build areas.'

Land Use LUC-2018-347

(Should consent be granted, it is appropriate that the land use for different stages of the subdivision, and the reissuing of consent for the tavern, be given unique land use numbers. For the purposes of this report, the one land use number has been used for all components of the consent with the relevant lot number shown in brackets and the tavern consent as [T] to differentiate between the stages and tavern.)

*That, pursuant to sections 34A(1) and 104B of the Resource Management Act 1991, and having regard to Part II matters and sections 104 and 104D, the Dunedin City Council **grants** consent to a **non-complying** activity being:*

[Lot 41 or the balance land of other stages]:

- *Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*
 - *Residential activity (one unit only) within the hall building or a new residential dwelling;*
 - *The above residential activity of future Lot 41 SUB-2018-63 where forming part of the balance land of all stages of SUB-2018-63;*
 - *The residential activity within existing buildings (coinciding with the residential units of Lots 42, 44, 53, 61 and 81 SUB-2018-63 – one unit each – but not new builds) while part of the balance land;*
1. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 41 Orokonui Estate – The Hall,' and the accompanying information*

submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:

2. *Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary (including future boundaries of proposed lots where the construction is occurring on balance land).*
3. *Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.*
4. *The development on this land must not exceed a site coverage of 30% where site coverage is calculated in terms of the relevant future lot (excluding land used as access to other sites) and not the entire balance area.*

NES:

5. *If, following the detailed site investigation of condition 3(h), 6(h), 9(h), 12(d), 15(d), 18(g), 21(g), 24(d), 27(g) or 30(d) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:*
 - a) *A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:*
 - *works appropriate for the contaminants present on-site*
 - *duration of the works*
 - *storage of soils during works*
 - *safe transport and disposal of soils*
 - *methods to ensure site is made erosion resistant*
 - *communication to workers*
 - *dust and sediment control*
 - b) *All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.*
 - c) *That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.*
 - d) *Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.*

For clarity, none of the following land use consents apply to the residential activity of the following lots while they are part of the balance land of any stage of SUB-2018-63. The relevant consent for the balance land and its development and activities is above [consent number].

[Lot 42]

- *Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");*

- Residential activity (one unit only) within the chapel building or a new residential dwelling;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 42 Orokonui Estate – The Chapel,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.

NES:

5. If, following the detailed site investigation of condition 3(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:
 - a) A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:
 - works appropriate for the contaminants present on-site
 - duration of the works
 - storage of soils during works
 - safe transport and disposal of soils
 - methods to ensure site is made erosion resistant
 - communication to workers
 - dust and sediment control
 - b) All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.
 - c) That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.
 - d) Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.

[Lot 43]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
 - Residential activity (one unit only) in a new residential dwelling;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 43 Orokonui Estate,' and the accompanying information submitted

as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:

2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
4. The development on this land must not exceed a site coverage of 30%.

NES:

5. If, following the detailed site investigation of condition 3(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:
 - a) A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:
 - works appropriate for the contaminants present on-site
 - duration of the works
 - storage of soils during works
 - safe transport and disposal of soils
 - methods to ensure site is made erosion resistant
 - communication to workers
 - dust and sediment control
 - b) All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.
 - c) That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.
 - d) Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.

[Lot 44]

- The disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
 - Residential activity (one unit only) within the main existing residential dwelling or replacement building;
 - An associated residential activity (family flat) within the existing one-bedroom apartment.
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 44 The Villa Orokonui Estate,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:

2. *Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.*
3. *Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.*
4. *The development on this land must not exceed a site coverage of 30%.*
5. *If a new residential unit is to be constructed on this land, then the existing villa must be removed.*
6. *That the apartment must be used in close association with the main residential unit on this site. The occupant/s of the family flat must be a relative/s by blood or marriage to the occupants of the main residential unit on this site.*

NES:

7. *If, following the detailed site investigation of condition 6(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:*
 - a) *A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:*
 - *works appropriate for the contaminants present on-site*
 - *duration of the works*
 - *storage of soils during works*
 - *safe transport and disposal of soils*
 - *methods to ensure site is made erosion resistant*
 - *communication to workers*
 - *dust and sediment control*
 - b) *All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.*
 - c) *That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.*
 - d) *Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.*

[Lot 51]

- *Residential activity (one unit only) in a new residential dwelling;*
1. *The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 51 Orokonui Estate,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:*
 2. *Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.*

3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
4. The development on this land must not exceed a site coverage of 30%.

[Lot 52]

- Residential activity (one unit only) in a new residential dwelling;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 52 Orokonui Estate – The Chapel' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.

[Lot 53]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
 - Residential activity (one unit only) in either an existing building or a replacement building;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 53 Orokonui Estate – The Workshop and Barn,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.
 5. If a new residential unit is to be constructed on this land, then the existing house/workshop must be removed.

NES:

6. If, following the detailed site investigation of condition 18(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:
 - a) A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled

start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:

- works appropriate for the contaminants present on-site
 - duration of the works
 - storage of soils during works
 - safe transport and disposal of soils
 - methods to ensure site is made erosion resistant
 - communication to workers
 - dust and sediment control
- b) All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.
- c) That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.
- d) Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.

[Lot 61]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
 - Residential activity (one unit only) within the existing building or a replacement building;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 61 Orokonui Estate – The Therapy Building,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.
 5. If a new residential unit is to be constructed on this land, then the existing building must be removed.

NES:

6. If, following the detailed site investigation of condition 21(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:
 - a) A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled

start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:

- works appropriate for the contaminants present on-site
 - duration of the works
 - storage of soils during works
 - safe transport and disposal of soils
 - methods to ensure site is made erosion resistant
 - communication to workers
 - dust and sediment control
- b) All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.
- c) That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.
- d) Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.

[Lot 71]

- Residential activity (one unit only) within a new residential dwelling;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 71 Orokonui Estate – The Tennis Court,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.

[Lot 81]

- Change of use, and the disturbance of soils for site remediation purposes under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES");
 - Residential activity (one unit only) within the existing building or a replacement building;
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 81 Orokonui Estate – The Female-2 Villa,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.

3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
4. The development on this land must not exceed a site coverage of 30%.
5. If a new residential unit is to be constructed on this land, then the existing building must be removed.

NES:

6. If, following the detailed site investigation of condition 27(a) of SUB-2018-63, it is determined that remediation work is requires soil disturbance of contaminated soils above the NES permitted levels, the consent holder must complete the following:
 - a) A Contaminated Soils Management Plan (CSMP) must be prepared and provided to the Resource Consent Manager for review to rcmonitoring@dcc.govt.nz no less than 10 working days before the scheduled start date. The CSMP must be approved by the Resource Consent Manager before any work on site can commence. The CSMP is to address:
 - works appropriate for the contaminants present on-site
 - duration of the works
 - storage of soils during works
 - safe transport and disposal of soils
 - methods to ensure site is made erosion resistant
 - communication to workers
 - dust and sediment control
 - b) All soil disturbance works must be undertaken in accordance with the approved CSMP. All soils should be handled in strict accordance with the provisions of the CSMP.
 - c) That the soils to be removed from the site must be tested and analysed for contaminants. A Site Soil Disposition Report must be submitted to the Council confirming that the conditions of the CSMP report have been met, and that the soils removed from the site have been disposed of appropriately.
 - d) Any soils removed from the subject sites shall be disposed of to an appropriately licensed landfill for such material. Evidence of disposal must be delivered to Council and may be by way of waste manifests and/or weighbridge receipts to rcmonitoring@dcc.govt.nz.

[Lot 82]

- Residential activity (one unit only) within a new residential dwelling.
1. The proposal shall be given effect to generally in accordance with the plans prepared by Terramark Ltd, entitled, 'Orokonui Estate Proposed Subdivision of Lot 100 DP 506797,' and 'Lot 82 Orokonui Estate,' and the accompanying information submitted as part of LUC-2018-347 received at Council on 28 June 2018, except where modified by the following:
 2. Any new building constructed on this land must comply with a height plane angle of 63° as measured from existing ground level at the boundary.
 3. Any new building constructed on this land must comply with a maximum height of 9.0m as measured from existing ground level immediately below the structure.
 4. The development on this land must not exceed a site coverage of 30%.

5. *That the existing shed on this site must be demolished once residential activity is established in a new building.*

[Tavern]

- *The re-establishment of a commercial activity (tavern) within the existing hall (whether on Lot 100 DP 506797 (CFR 768400), Lot 41 SUB-2018-63, or the balance land of any stage of SUB-2018-63);*

at 90 Orokonui Road, Waitati, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.

1. *That all existing consents for the tavern must be surrendered to Council within three months of the date of this decision, regardless of whether or not this consent is given effect.*
2. *That the hall presently existing on the site be limited to 200 persons when alcohol is served and that it function independently from the adjacent bar/restaurant.*
3. *That the bar/restaurant be limited to 120 people at any one time and that it not extend into the hall area.*
4. *That the hours of operation for the sale and consumption of alcohol at the bar/restaurant and function hall be limited to the following: Monday – Wednesday 9.00am to 10.00pm; Thursday 9.00am to 11.00pm; Friday – Saturday 9.00am to 12.00 midnight; Sunday 9.00am to 12.00 midnight.*
5. *That 65 car parks be established for the hall and bar/restaurant activity. A layout of the car-parking are must be submitted to the Resource Consents Manager for approval prior to any application for a liquor license.*
6. *That the consent holder construct a path from the end of the legal road to the front of the tavern prior to any application for a liquor license.*
7. *That the consent holder must install and maintain adequate signage on-site to identified the exit from the site, and setting a modest speed limit within the site for vehicles suitable for interaction of vehicles with pedestrians.*
8. *That the maintenance of the sewerage treatment station must be supervised by an operator with at least a 'C' grade certification, and the station must be visited no less than once a month to ensure it is functioning adequately. A record must be kept of visits and all maintenance works, and be available to Council on request.*
9. *That accurate records of chlorine levels in the water supply be kept daily so as to ensure that chlorination complies with the National Drinking Water Standards. The records must be available to Council on request.*
10. *That solid waste must be disposed of in a manner approved by Council's Environmental Health Department. Written approval from Council of the proposed method of solid waste disposal must be obtained prior to any application for a liquor license.*
11. *That adequate lighting be provided along the internal pathway and in the carparking area during opening hours of the tavern.*

From: [Lianne Darby](#)
To: [Wendy Collard](#)
Subject: FW: Resource consent Orokonui Estate
Date: Tuesday, 2 October 2018 10:55:37 a.m.
Attachments: [image002.png](#)
[image003.png](#)

Hi Wendy

Can you please attach this to my report.

Regards

Lianne

From: Andrea Newman (Small Business IT) [mailto:andrea@sbit.co.nz]
Sent: Tuesday, 2 October 2018 10:51 a.m.
To: Lianne Darby
Cc: Dave Symes (Small Business IT)
Subject: Resource consent Orokonui Estate

Good morning Lianne,

Thanks for talking to me this morning.

As discussed I did not receive the full documentation regarding the full resource consent application. This has recently been given to me by a neighbour. I have previously signed a document approving the subdivision boundaries, but at no point was I made aware that the request included revitalising the consent for a tavern (or ensuring that this consent was not removed as part of the process). **I am opposed to such an activity**. Had I known I had an opportunity to have my opinion known about this issue, I would have taken it.

The property known as Orokonui Estate is very quiet, peaceful and idyllic, and this is why we purchased here 3 years ago. We were already aware (and bought into the vision) of the first subdivision plan which **did not** include breaking up section 4 into four sites. The more recent plan was not ideal for us, but we agreed to the proposed splitting of this site into 4, subject to the build platforms being clearly outlined.

My property at 60 Orokonui Road is directly opposite the proposed site for the tavern, and as such is very much in view and hearing, of such an activity. A working tavern, with all its associated noise and vehicle movements would be detrimental to our enjoyment of our future retirement home to the extent that should a new owner open a tavern we feel we would have to sell, and our dreams of retiring in such a peaceful secluded location would be shattered.

I am not opposed to the subdivision plans as outlined in the full consent documentation, and would be prepared to accept these, but would only do this if the request to keep the tavern consent was rejected. To some extent this would possibly been seen as a trade-off, and one which would be in keeping with the uniqueness of the property.

I understand that the Butsons are likely wanting to keep this condition for future resale value, and as such, I am taking the exactly the same position in regards to my property.

Please can you ensure my original signed consent is removed from this process.

I would ask that the council consider my views when making their decision.

Kind regards

Andrea Newman

On behalf of the AJ Newman Inheritance Trust

Andrea Newman

Office Manager



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