

Report

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 26 July 2016

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2016-28
LAND USE LUC-2016-169
82 RICcarton ROAD EAST
MOSGIEL

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 26 July 2016. 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. DESCRIPTION OF ACTIVITY

- [2] The proposal is to subdivide the land at 82 Riccarton Road East, Mosgiel, into three new lots and to establish residential activity on each new lot. The subject site is legally described as Lot 28 Deposited Plan 341800, held in Computer Freehold Register 171990, and has an area of 6.6862ha. It is a generally rectangular shape, and is situated on the lower slopes of Saddle Hill immediately behind a line of residential properties fronting Main South Road. The subject site obtains access via the end of Riccarton Road East and a right of way over 115 Riccarton Road East.
- [3] The subject site contains a ridgeline that runs almost east to west across the site. The land to the north of the ridge slopes downwards towards Main South Road at a gradient of approximately 3H:1V. The hillside is covered in pasture and scattered trees and shrubbery. The ridgeline itself provides a narrow length of flattish land, before the topography of the site falls again towards the southeast at a gradient of approximately 2.2H:1V. This slope is planted in young eucalyptus trees. The main access to the site is a formed and gravelled driveway entering the property at its southeast corner. At some point in the past, a secondary access (track) across the south-facing hillside has been roughly formed to a width of approximately 3.5m. It does not appear to be in regular use, and has a grass surface.
- [4] The subject site was part of a subdivision, RMA 2003-0879 (now renumbered RMA-2003-367082), issued consent on 4 June 2004 when minimum lot size for a Rural-zoned site situated outside of a Landscape Management Area was considered to be 6.0ha. The size of the subject site was therefore created in accordance with the expectations of the Proposed Plan (now the Dunedin City District Plan) at that time. The subdivision also specified a building platform on-site on the flatter land of the ridgeline, with the future residential dwelling to be situated wholly within this platform.
- [5] Land use consent, RMA 2005-0784 (now renumbered RMA-2005-369384) was then issued on 19 January 2006 to establish residential activity on 82 and 86 Riccarton

Road East in response to the Environment Court decision (C176/2004) which deemed that minimum lot size for the Rural Zone was to be 15.0ha. As a result, residential activity on the subject site was considered to be a discretionary (unrestricted) activity at that time. The land use consent did not include plans or elevations, and consent was granted in principle for a dwelling located within the building platform. Conditions of consent provided control on the design and appearance of the future dwelling. The consent was to lapse on 19 January 2011, but an objection to the conditions of consent, RMA 2006-0082 (now renumbered RMA-2006-369887), effectively rescheduled the lapse period to 23 March 2011.

- [6] A dwelling was then built on 86 Riccarton Road East, which Council accepted as having given 'effect to' the land use consent. As such, residential activity on 82 Riccarton Road East could follow in due course as the consent had not lapsed. In 2007, a garage/workshop (called a 'barn' in subsequent consents) was constructed on 82 Riccarton Road East in accordance with ABA-2007-315788, in a position outside of the approved building platform. A farm shed was then constructed in 2009, by building consent ABA-2009-610, also outside of the building platform.
- [7] A variation to the land use consent, LUC-2005-369384/A, issued on 17 February 2016, allowed for the barn to be used for temporary residential activity. The residence is to be decommissioned on the establishment of a dwelling within the building platform, although no condition specifically requires this decommissioning. The requirement will fall under condition 1, which is the standard '*... generally in accordance ...*' condition requiring the works to be undertaken in accordance with the details given in the application. No date was given by the applicant or the Council as to when the new house was expected to occur, and no further development of the site has happened. The existing building continues to function as the residential dwelling for the site.
- [8] The applicant now seeks to subdivide the subject site into three lots. Proposed Lot 1 will be a 2.0ha site containing the existing temporary residence. The plan shows a building platform for this lot which will have an area of 20m by 15m (300m²) and currently contains the present temporary residence but allows for expansion or redevelopment with a larger dwelling. It is unlikely that a new dwelling could be built within the building platform without also removing the present temporary dwelling as part of the project.
- [9] Proposed Lot 2 will also have an area of 2.0ha. It will be a vacant site, but will contain the approved building platform of the original subdivision. Residential development of this building platform is expected on this building platform. A new access to the building platform will be created from the south-western corner of the subject site over the roughly formed track and up the side of the south-facing slope.
- [10] Proposed Lot 3 will be a long, narrow site situated on the north-facing slope. It will have an area of 2.5ha, and will have a 40m by 40m (1600m²) building platform situated in the northeast corner of the property. Access will be directly to Riccarton Road East.
- [11] The application includes an assessment of effects on the environment and a geotechnical report. A copy of the application is attached to this report in Appendix A.

3. ACTIVITY STATUS

- [12] 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.

[13] 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, the rules of a proposed plan must be considered during the assessment of the application pursuant to section 104(1)(b) of the Act.

[14] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

[15] The subject site is zoned **Rural** in the Dunedin City District Plan. The Hazards Register shows this land as being subject to **10116 – Land Stability (land movement)**, and **11589 – Land Stability (land movement)**.

Subdivision Activity:

[16] Subdivision is a restricted discretionary activity in the residential zones where the application complies with Rules 18.5.3 – 18.5.6, 18.5.9 and 18.5.10, and each resulting site is 15.0ha or greater. All three new lots will be smaller than 15.0ha. Accordingly, the subdivision is considered to be a **non-complying** activity pursuant to Rule 18.5.2.

Land Use Activity:

[17] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity, provided that the minimum area of the site is no less than 15ha. The future residential activity of proposed Lots 1, 2 and 3 will be on new sites having less than 15ha of Rural-zoned land. Accordingly, the residential activity for these new sites is considered to be a **non-complying** activity pursuant to Rule 6.5.7(i).

[18] Although not strictly applicable to non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to acceptable use of the sites. Any development built on these lots is expected to breach the performance standards of Rule 6.5.3 as follows:

- Rule 6.5.3(i) specifies for residential units front yards of 20m, and rear and side yards of 40m. The proposed building platforms are expected to breach side and rear yards by various amounts as shown on the application plan. The proposed and existing building platforms will be situated at least 20.0m from external boundaries, and less than 20.0m in respect of some internal boundaries.
- Rule 6.5.3(iv)(d) requires access to comply with the Transportation Section. Rule 20.5.7(v)(b) requires an access serving four or more residential units in the Rural zone to have a minimum formed width of 5.0m. The existing access to the subject property is 4.0m wide in places, therefore being 1.0m too narrow for the additional use.

The Proposed Plan

[19] The site is zoned **Rural – Coastal** in the Proposed Plan. Parts of the property are identified as **Hazard 2 – Land Instability**.

Subdivision Activity:

[20] 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 which sets the minimum site size for the Rural – Coastal zone at 40.0ha.

- [21] 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 proposal with Rule 16.7.4 results in an activity status of **non-complying** pursuant to Rule 16.7.4.3.
- [22] The access to proposed Lots 1 and 2 also fails to comply with Rule 6.6.3.9(a)(v) which requires a minimum formed width of 5.0m for a rural access serving four or more residential units.
- [23] Under the Proposed Plan, activities have both a land use activity and a development activity component.

Land Use Activity:

- [24] 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(a) specifies that the first residential activity on a rural site in the Rural – Coastal zone requires 15.0ha of land to be a permitted activity. None of Lots 1, 2 or 3 are 15.0ha or larger, and the residential activity for these lots is considered to be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

Development Activity:

- [25] There are no actual building proposals for any of the new lots, but residential activity is anticipated on each of the proposed building platforms. Rule 16.3.4.5 lists new buildings greater than 60m² as being a permitted activity in the Rural zones, subject to the performance standards. Dwellings built on the proposed building platforms will possibly fail to comply with the following:
- Rule 16.6.11 requires residential buildings to have a minimum setback from a road boundary of 20.0m, and 40.0m from a side or rear boundary. The proposed and existing building platforms will be situated at least 20.0m from external boundaries, and less than 20.0m in respect of some internal boundaries. Accordingly, the future development on the building platforms could potentially breach the setback distances by up to 20.0m in respect of external boundaries, and up to 35m or so in respect of internal boundaries.

- [26] The future development on the proposed building platforms is therefore considered to be a restricted discretionary activity pursuant to Rule 16.3.2.14.

Overall Proposed Plan Status:

- [27] Having regard to both the land use and development activity components under the Proposed Plan, the land use proposal is considered to be a non-complying activity.

Summary

- [28] The application was lodged on 28 April 2016, after the close of submissions on the Proposed Plan. The 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 Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules are not relevant to the activity status of the application as determined at the time of lodgement except for the rule regarding minimum lot size of a Rural-zoned property.

- [29] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan and the Proposed Plan, and is considered to be a **non-complying** activity. The activity status of the residential activity for the new lots is determined by the Dunedin City District Plan, and is considered to be a **non-complying** activity.
- [30] At the time of assessing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sits 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 could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision application except for the minimum site size rule which needs to be weighted accordingly.

NES Soil Contamination Considerations:

- [31] 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.
- [32] The applicant's agent has had a search of Dunedin City Council records undertaken (HAIL-2016-62) in order to determine whether or not the NES is likely to be relevant, as provided for by Regulation 6 of the NES. The search of Council records has not identified any use of the land by a HAIL activity. On the basis of the information received, the applicant's agent comments:
- [33] *'I have had the opportunity to review the HAIL search information provided by Council for 82 Riccarton Road. It does not show any evidence of there having been any HAIL activity carried out on the site. The owner advises that neither he nor the previous owner (Saddle Views Estate) have carried out any such activities on the site. While the site has historically been farmed, there is no evidence of sheep dips or other such activities having occurred on the property. The aerial photos attached to the HAIL search date back to 1947.*
- 'Hence we do not believe that the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 are invoked with regard to this proposal.'*
- [34] Accordingly, it is accepted that the NES is not applicable to this application.

4. NOTIFICATION AND SUBMISSIONS

- [35] Section 95A of the Act directs that a consent authority may notify an application if the effects on the environment are likely to be more than minor, the applicant requests public notification, or special circumstances may apply. In this case, the application was lodged as a notified application.
- [36] No affected party written consents were submitted with the application. The application was therefore publicly notified in the Otago Daily Times on 18 May 2016. Copies of the application were sent to those parties whom the Council considered could be directly affected by the proposal.

[37] Four submissions were received following notification, plus one late submission. One submission was neutral in its stance, one was supportive, and two oppose the application. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C. The late submission is appended in Appendix F.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Wayne and Gay Vidal	Support	• Submitters believe it would benefit the area if the subject site were to become residential. • Agrees to the subdivision into three lots.	No.
2. New Zealand Fire Service Commission (NZFS)	Neutral	• The NZFS Commission has a responsibility under the Fire Service Act 1974 to provide for fire-fighting activities in a safe, effective and efficient manner. • NZFS supports approach of applicant to have fire-fighting water supply to all three proposed lots. • NZFS seek to have a condition of consent requiring fire-fighting water supply to comply with the NZ Fire Service fire-fighting Water supplies Code of Practice SNZ PAS 4509:2008. • Lists three conditions and one advice notice for consent	Yes.
3. Margaret Sandra Scott	Oppose	• Submitter concerned about slip prone area, as identified by a DCC letter last year. • Rural zoning. Visual interaction with submitter's property and from the Taieri. • Submitter very concerned about impact of water runoff from proposed housing. • No detail in application re: stormwater and effluent disposal. • Water source to be 'mainly' collected on-site, but could be more. • Site on proposed Lot 2 directly above submitter's house. Already a water runoff problem (refers to correspondence with Council in 2012 & 2015). Ditch behind house causing problems. New house will make it worse. • Requests that there be no building. • Requests more specific conditions over planting, not more building. • Requests drainage and effluent disposal be dealt with more specifically.	Yes.
4. Otago Regional Council (ORC)	Oppose	• Submission relates to unplanned intensification of rural land; natural hazards; and on-site water discharges. • ORC database identifies land instability issues affecting the subject site. • A natural hazard assessment has only been provided for one lot. • Geotechnical information for proposed Lots 1 and 2 stated to be part of 2004 and 2006 consents, but not provided with this application. • Geotechnical report is considered insufficient for DCC to make a decision on application. • Sizable mapped landslide feature in centre of property. Feature clearly visible on LiDAR and aerial imagery. • Geotechnical report identifies part of this	Yes.

		area on instability, but presents the landslide as a series of smaller slips confined to loess, rather than one larger deep-seated landslide complex. Other areas of instability not identified. • No assessment given of global stability on the property. Extensive land instability in the surrounding area, including all three proposed lots. • No evidence of excavations, ground test or subsurface investigations were undertaken on the proposed building platforms. • Site has loess slopes, very prone to shallow erosion such as tunnelling, small mobile slips and gully erosion. • ORC has significant concerns about proposal to discharge both wastewater and stormwater to land on-site. • Need to consider how further concentration of water to land could adversely affect land stability conditions on the site. • No assessment of current Regional Policy Statement (RPS), nor proposed RPS. • ORC position is that further information is required to determine how proposal may be affected by land instability hazard, as well as how the activities will affect the land stability. • Relying on a 10 year old assessment of land instability is not appropriate. Many areas affected by coastal flooding event of 3 June 2015; uncertain if this site was affected. • RPS requires management, avoiding, and reducing risk. • Granting subdivision will encourage an activity that increases the risk by allowing change in use of an undeveloped area. • Obj 3.8 & Pol 3.8.3 of RPS – urban growth and fragmentation. • ORC recognises that subject site has less productive potential than land on plains. • Increased runoff from hard surfaces must be considered. • Care undesirable precedent is not set, particularly in regard to Proposed Plan. • Further development would result in a cumulative effect on potential land productivity, infrastructure demand and environmental services. • Rules of current Plan developed at a time when there was less pressure on the fragmentation of rural land and the associated effects on infrastructure and ecosystem services such as drainage. • Focus of applicant's argument is on amenity values and character. • DCC must give appropriate weight to direction the community has requested in development of proposed RPS and Proposed Plan in respect to development and use of rural land. • Requests that consent be declined unless DCC is satisfied that any natural hazards can be mitigated; stormwater and wastewater will not exacerbate risk of land instability; no	
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		precedent for unplanned intensification of rural land near Mosgiel is set.	
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5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [38] 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.*
- [39] 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.
- [40] 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 where the proposal does not. 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 Rural-zoned lots. No subdivision of this land into lots of the sizes proposed is anticipated.
- [41] In regards to the proposed land use for the new lots, only the District Plan rules are operative or in effect. While residential activity is an expected component of the Rural zone, no dwellings can be established on Rural-zoned sites less than 15.0ha as of right. The subject site is already undersized. Accordingly, no residential activity on the proposed lots is permitted, and only one house can be established on the subject site courtesy of resource consent RMA-2005-369384 (varied by LUC-2005-369384/A to allow for the use of a temporary house outside of the building platform). There is a very limited permitted baseline to apply in this case.
- [42] A building platform has already been approved for the subject site which will be situated within proposed Lot 2 on subdivision. Although a dwelling is anticipated in this building platform under the underlying consent, only one dwelling is consented for this property and this is currently the former workshop/garage situated outside of the building platform. A dwelling can still be built on the platform, but the existing dwelling will have to be decommissioned (kitchen removed) at the same time. I expect that the actual building is unlikely to be removed.
- [43] It is considered that this is the appropriate baseline against which the activity should be considered, and against which the proposal has been assessed. As a result, it is the effects arising from the proposal, beyond the permitted baseline, that are the crucial elements and these are considered further below.

[44] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7, 14.6, 17.8, 18.6.1, and 20.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan:

- Lot Size and Dimensions
- Easements & Encumbrances
- Infrastructure
- Building Platforms and Bulk and Location
- Landscape
- Transportation
- Archaeological Sites
- Hazards
- Earthworks
- Physical Limitations
- Amenity Values
- Cumulative Effects
- Sustainability

[45] 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)

[46] The proposed subdivision will create two lots of 2.0ha, and one of 2.5ha. Only proposed Lot 3 will have frontage to legal road, and will obtain access directly from Riccarton Road East at the northeast corner of the site. Proposed Lots 1 and 2 will gain access from the southern end of the property via rights of way over 115 Riccarton Road East. Lot 1 will utilise the existing access, while Lot 2 will have a new driveway formed over the roughly formed track.

[47] Minimum lot size under the Dunedin City District Plan for the Rural zone is 15.0ha. The subject site is already 43% of minimum site size, but was created as part of a subdivision, RMA 2003-0879 (now renumbered RMA-2003-367082), issued consent on 4 June 2004 when minimum lot size for a Rural-zoned site situated outside of a Landscape Management Area was 6.0ha. The size of the site was therefore in accordance with the expectations of the Proposed Plan (now the Dunedin City District Plan) at that time. This '6.0ha rule' was in effect for a period of approximately two and a half years from May 2002 to November 2004. The consequences of the rule are evident when viewing the subdivision data for Dunedin City over the following years which show a definite spike in new lots of 6.0ha to 15.0ha within the Rural zone (refer Table 2: Appendix E), in the years 2004 and 2005. In November 2004, minimum site size reverted to 15.0ha, but those subdivisions under the 6.0ha rule already consented took several years to be completed and are reflected in the figures over the next few years after 2004.

[48] From a purely practical view point, the proposed 2.0ha to 2.5ha lots are of suitable size and shape for a residential dwelling and generous curtilage. There appears to be a geotechnically stable area on each lot where a residential building can be sited. In this respect, the lot sizes and dimensions are acceptable. However, the primary purpose of Rural zoning is not to provide big house sites. While there are many small rural properties throughout Dunedin City, the minimum lot size is set at 15.0ha, largely to provide a more open environment and to maintain some productive worth to the rural land resource as discussed by the objectives and policies of the District Plan.

[49] The application states that, at 6.0ha, the subject site is too small for rural activities and too large for rural residential purposes. If the subdivision application is not granted, the applicant argues there is a potential for a lack of maintenance of the site

to result in the establishment of pest plant and animal species. The applicant believes that if further residential activity is established on the site, the land will be much better managed. Hence the proposal to subdivide the subject site into three lots consistent with Rural-Residential zoning.

- [50] Small rural blocks are highly unlikely to ever be independent and economically-viable properties, and I do not expect that too many people purchase such sites believing that they will prove to be so. In this case, the land of the subject site is also sloping and not prime pastoral country, further reducing its productive worth (although it is possible that it could be used for some form of horticulture which would thrive on north-facing country of this nature). As with all properties, the level of economic return is significantly influenced by the amount of time and/or finance that the property owner chooses to invest in maintaining and working the property. This is true regardless of whether the site is 2ha, 6ha, 15ha or 100ha. If the argument is that 2.0ha will require less work than a 6.0ha site, I note that 2.0ha will still require some farming activity and it makes little difference in terms of work whether you are grazing animals on 2.0ha or 6.0ha. If there is to be no farming at all, then 2.0ha is a very large garden to maintain.
- [51] The Proposed Plan is even more stringent, setting a minimum site size of 40.0ha for subdivision, and 15.0ha to establish the first residential dwelling on a rural site. These rules are subject to submissions, and are therefore not finalised, but it should be noted that there are a number of supporting submissions in favour of these lot sizes, predominantly from parties who have an interest in maintaining rural land for productive purposes. There were also submissions from those who sought to have the 15.0ha minimum site size re-imposed over the Rural zones, and others who thought the proposed site sizes were too large.
- [52] I consider that the proposed 2.0ha lots are not what the District Plan or the Proposed Plan seek for the Rural zones. The minimum lot size for the District Plan was set at 15.0ha by the Environment Court in November 2004, and the establishment of houses on undersized sites was also made a non-complying activity by the Court. Smaller sites and a denser degree of residential development are not anticipated by the District Plan.

Easements (18.6.1(i)) and Encumbrances

- [53] The subject site was created by DP 341800 in 2005. There are a number of easements and encumbrances listed on the title, mostly created by the subdivision of DP 341800, as follows:
- [54] There is a Land Improvement Agreement **741160** dating from 1989 between the Otago Catchment Board and a previous owner of the land (then part of a large farm block). The agreement specifies fencing requirements, gorse spraying, and forestry planting for large areas of land. It is not clear whether or not the agreement is meant to apply specifically to the subject site, and there is no forestry undertaken within the subject property. Chances are, the agreement has limited relevance to the subject site, but will carry down automatically onto the three new titles on subdivision. The Council does not have any authority over this document.
- [55] Transfer **5268972.2** is for telecommunications and electricity easements in gross over the subject site. The easements wander alongside the northeast boundary of the property, and deviate from the boundary inwards to a point near the existing temporary house on-site. The easement appears to be clear of all proposed building platforms. It will pass down onto Lots 1 and 3 on subdivision.
- [56] Another easement, Easement Instrument **6451339.16**, for the conveyance of electricity, telecommunications and computer media, as well as rights to convey water and gate power and control cable easements, follows a similar alignment along the

northeast side of the subject site and then along the southeast boundary. This easement is in favour of 86 Riccarton Road East, and will carry down automatically onto Lots 1, 2 and 3 of this proposal with no adverse consequences. The easement appears to be clear of all future building platforms, although it will be relatively close to the platform of proposed Lot 3. A subsequent part cancellation of easements, addressed by **6815128.2**, does not affect the subject site in any way.

- [57] In turn, the subject site has rights to convey electricity for security gates, gate power and control cable over 332 Saddle Hill Road created by Easement Instrument **6474637.1**. This easement will carry down in favour of all three proposed lots although it is doubtful that Lot 3 will gain any benefit from the rights given. Optional easements shown on DP 341800 continue these rights further down the hill over properties between the subject site and 332 Saddle Hill Road, but the easements do not appear to have been formally created.
- [58] The subject site is also subject to a Land Covenant **6535933.1** between Saddle View Estates Ltd as Grantor, and Kimberly John Taylor and Calvin John Fisher as Grantees. The subject site Lot 28 DP 341800 is a servient tenement while Lots 20 and 21 DP 341800 Part 171986 (being the private access roads between the subject site and Saddle Hill Road) are the dominant tenements. The covenant restricts the subdivision of the servient land prior to 1 January 2015 into more than two separate certificates of title. Although this proposed subdivision does not meet the restrictions of the covenant in terms of the number of new lots to be created, the date of 1 January 2015 has been passed and presumably the covenant no longer has any weight. Council does not administer private covenants in any case so the presence of the covenant, whether current or not, is not a matter for consideration by the Council. I would expect the covenant to carry down onto any new titles created (even if not relevant) unless the applicant has it cancelled.
- [59] Finally, the subject site is also subject to a consent notice **6451339.15** which requires any dwelling to be located wholly within the building site identified as the 'approved building platform' unless an alternative site is approved by Council in accordance with further geotechnical investigations. The site owners are also required to manage areas of instability on their lot in accordance with the Land Management Plan attached to the consent notice. This Land Management Plan has been prepared by Geolink Land Investigations Ltd. Thirdly, the consent notice has requirement for access to a 12,000 litre supply of water for fire fighting. The 12,000 litres can be accommodated as part of the domestic supply, but must always be available for fire fighting.
- [60] The existing dwelling on the subject site is outside of the assigned building platform but was approved earlier this year in this position by LUC-2006-369384/A which varied the original land use consent requirement to have the dwelling within the building platform. As a geotechnical report prepared by Dr Jon K Lindqvist was submitted with the variation application (thereby satisfying the condition of the consent notice), it was not necessary to vary the consent notice at the same time.
- [61] The Land Management Plan seeks to control areas of land instability, enhance the visual amenity of the 'development', and mitigate prevailing winds to better provide shelter and the environmental enhancement of the house sites. The Land Management Plan is in respect to more properties than just the subject site, but makes special mention of Lot 28 DP 341800 in respect of block planting of the '*... severely eroded areas above East Taieri*'. Suitable tree species for the planting are identified. The subsequent geotechnical report (revised on 18 May 2016) prepared by Dr Jon K Lindqvist specifically for this subdivision application shows an approximate extent of 'disturbed ground' across the north-facing slope of the subject site. This has some planting in place, but it is questionable as to whether or not it has been planted to the degree anticipated by the Land Management Plan. All three proposed lots will contain a portion of this area.

- [62] No new easements for the proposed subdivision have been identified by the application plan. All three new lots will have their own access points to legal road or existing rights of way, and no new rights of way through the subdivision site need to be created. As the lots are to be self-serviced, there will be no need for service easements either.

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

- [63] The application notes that the primary source of potable water for the new lots will be rainwater collection from roof surfaces, and advises that the new development will include the measures necessary to comply with the New Zealand Fire Service's Code of Practice for Fire Fighting Water Supplies.
- [64] The application also states that previous geotechnical investigations have considered the matter of on-site effluent disposal and recommended use of a system that has been specifically designed for the site by a suitably qualified person. The application names Oasis Clearwater 2000 as being an appropriate system. Whichever system is selected will treat and disposal of wastewater within the boundaries of the lot, and will comply with the New Zealand Building Code. The applicant is prepared to accept a consent notice regarding the need for a specifically designed effluent disposal system.
- [65] Council's Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She notes that the proposal is for undersized lots, and the subject site is at least partially located in a recognised land instability area.
- [66] The subject site is located within the Rural zone and outside of the Urban and Rural Water Supply Areas as shown in Appendix A and B of the Dunedin City Council Water Bylaw 2011. Consequently, no reticulated water supply is available to the proposed subdivision. Stormwater collected from roof surfaces can be used for domestic water supply and should be stored in suitably sized tanks with a minimum of 25,000 litres of storage per lot. The Consents and Compliance Officer advises:

'The New Reticulated Utility Services (Water, Wastewater or Stormwater) Policy adopted by the Council on 22 February 2010 states "Generally the provision of wastewater and stormwater services will follow similar supply area restrictions [to the Water Bylaw]". As such, the proposed subdivision is not entitled to a wastewater connection. Onsite disposal is considered appropriate within the Rural zone.'

'Any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by a DCC-approved septic tank and effluent disposal system designer. The instability of the land and its ability to accommodate an effluent disposal field that does not increase risk is a key factor for consideration.'

- [67] The applicant has requested that Lot 3 be able to connect to the urban reticulation available in East Taieri. The Consents and Compliance Officer advises that where extraordinary circumstances can be demonstrated, the applicant may have their request considered by the Infrastructure and Services Committee (ISCOM), and then states:

'Avoiding exacerbating the risk of land instability may be considered an extraordinary circumstance for reticulated wastewater provision. Therefore, WWS's hydraulic modeller has investigated the capacity in the area (including for water supply) and has identified that:

- *The water network already experiences low pressures at this location; and*
- *The wastewater network has significant issues downstream, with wet weather overflows occurring along Ashton Street, Carlyle*

Road, Kura Place and Tyne Street. In large rainfall events the wastewater treatment plant spills excess flows into the Silverstream.

'The networks do not have capacity to provide for any new unanticipated "out of zone" connections, which would exacerbate existing issues. WWS would not support an out of zone application for either water supply or wastewater to this property.

'Because of the land instability issues, and the lack of capacity within both the water supply and wastewater networks, conditions requiring onsite servicing are recommended (see below). In granting any consent to allow the proposed development to occur, the hearings panel should be satisfied that onsite disposal of effluent can be managed without exacerbating the risk of land instability.'

- [68] The Water and Waste Services Business Unit are concerned that consent for subdivision might be granted with the expectation that Lot 3 will have reticulated services. The department does not want any future application to ISCOM for connection to these services, should the situation arise, effectively pre-determined by the granting of resource consent for subdivision and development.
- [69] Regarding the disposal of stormwater, there are no reticulated stormwater services available for connection. Stormwater from rights of way, driveways, drain coils and water tank overflows are not to create a nuisance on any adjoining property, and should be actively managed to avoid exacerbating the risk of land instability.
- [70] Proposed Lot 1 currently has a dwelling which is serviced with a septic tank for wastewater drainage. Stormwater discharges to water tanks for domestic water supply.
- [80] New Lots 2 and 3 will each require a septic tank and effluent disposal system designed by an approved designer for each new lot for any proposed buildings. Effluent disposal must be undertaken in a manner that does not exacerbate land instability issues. Stormwater from the roofs can be used for domestic water supply as mentioned above. Water tank overflows are not to cause a nuisance to any neighbouring properties and should not be allowed to flow uncontrolled within the land instability area.
- [81] The matter of stormwater and effluent discharge from the new lots has been raised by two of the submitters. One is a resident at the base of the hill below the building platform on proposed Lot 2. She has had issues with runoff from the hillside in the past, and correspondence in Council's records over 2013 to 2015 confirms this (refer Appendix E). The Dunedin City Council referred the problem to the Otago Regional Council in October 2015. This submitter opposes the proposed subdivision, and requests that there be no new buildings on the site. She would also like the drainage and effluent disposal dealt with more specifically.
- [82] I note that the approved building platform on the subject site is directly up-hill from the submitter's property at 103 Main South Road, and the existing land use consent for this property anticipates that a dwelling will be built on this platform. The land use consent given to use the existing building as a house is expressed in terms of it being a temporary arrangement (with no time limit specified), so there is still an expectation that a dwelling will be built on the approved building platform in the future and the existing building be decommissioned as a house (although it will probably not be removed). Therefore, it is not possible for Council to prevent a future house on this building platform, either as part of this subdivision proposal or retrospectively in regards to the existing consent notice for the site. However, run off from driveways,

roof surfaces, and/or tanks overflowing is not to cause a nuisance pursuant to section 17 of the Resource Management Act 1999.

- [83] The Otago Regional Council has also submitted on the subdivision proposal, and comments:

'ORC's concerns as to conditions on this site are significant as it is proposed to discharge both wastewater and stormwater to land on-site. It is important that consideration is given to how this further concentration of water on to land could adversely affect land instability conditions on the site including the discharge of water on proposed Lots 1 and 2.'

- [84] The Otago Regional Council's concerns about stormwater and effluent discharge to land appears to be primarily in respect of land instability issues rather than downhill effects on neighbouring properties due to overland flows.
- [85] Provided sufficient care is taken, the issues with runoff adversely affecting downhill properties should not worsen with the placement of a house on this platform. The concern is that sufficient care will not be taken at the time of design and construction, or in the years to follow, and that there could be problems not only with overland flows but with to-ground discharges destabilising the hillside. I note, however, that the approved building platform is at the top of the ridge, and the ground also falls towards the south from this location. Perhaps the answer is to require drainage to discharge to the southern slope rather than the northern slope. I am not qualified to know whether or not this would resolve the issues, but it might be a matter worth discussing with all interested parties and qualified personnel. I also note that the new dwelling will be obtaining its water supply from roof collection. It is therefore possible that there will be less stormwater runoff from the land.

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

- [86] The proposal is to create three new lots, each having a building platform where a residential dwelling can be built supposedly without further resource consent or geotechnical investigation. The primary consideration in selecting the building platforms appears to be land stability. It is not for landscape reasons, probably because the subject site is outside any recognised landscape area and there are no controls on siting (except for yard requirements) or house design imposed by the District Plan for this land.
- [87] It should be noted that the imposition of a building platform does not mean that all future buildings will be confined to this platform. The existing consent notice on the subject site only imposes controls on the house position, not farm buildings, and even then allows for house construction elsewhere provided the land is geotechnically stable. This is exactly the situation that has arisen; the present house on the subject site is a former barn, and not within the approved building platform. I know from experience that new landowners sometimes seek to build outside assigned platforms for a variety of reasons, and it is difficult for Council to insist on a building being kept within a platform unless there are very definite reasons, such as ground stability, why it is necessary. Therefore, the proposed building platforms might indicate where future dwellings will be placed, but this cannot be guaranteed.
- [88] In the case of proposed Lot 1, the proposed building platform is shown as 20m by 15m (300m²), and it contains the existing building on-site which is currently being used as a residence although supposedly on a temporary basis. The building platform is over 40m from the existing boundaries of the subject site, and will maintain the 40m Rural-zone yard requirement after subdivision in respect of the existing east and south boundaries as well as the new boundary to the north between proposed Lots 1 and 3. It will not be 40.0m from the new boundary with Lot 2. No measurement has been provided, but I estimate from the application plan that it will be approximately

15.0m from this new boundary. As such, any bulk and location issues with this building platform will be confined to the boundary with Lot 2, and are therefore internal to the subdivision proposal. No other parties will be adversely affected.

- [89] The effects of a building on this platform are already evident as there is an existing structure in this location. The building is a two-storey structure situated almost at the ridgeline. As such, it is visible from the Taieri Plains, particularly when driving southeast on Riccarton Road East from the railway line. The structure was not constructed as a house, and its residential use is supposedly temporary, so it is reasonable to expect that, should consent be granted, this building will be altered and/or a new house be built instead. It is unlikely that a completely separate house can be built on Lot 1 within the proposed building platform without removing the existing building. It is also possible for a new house to be built elsewhere within Lot 1 provided a geotechnical report confirms the land is stable, so the platform does not actually confine a future dwelling to this location; it merely identifies stable land and provides for a house to be constructed within the yard space.

- [90] The proposed building platform for Lot 2 is the existing 'approved building platform' for the subject site. Therefore, there is already an expectation that a house will be placed on this platform, this being situated on the flatter land at the ridgeline. The platform maintains a 20.0m yard space to the west, next to 86 Riccarton Road East. The reduction in the 40.0m side yard requirement was approved by RMA 2005-0784 (now renumbered RMA-2005-369384) on 19 January 2006. Although the lapse period for the consent was five years and no dwelling has been built within this platform and/or yard space, the consent is considered to have been given effect because of development on 86 Riccarton Road East progressing in accordance with the consent. Therefore, the neighbours of 86 Riccarton Road East would not be considered an affected party if a dwelling is built in this building platform within 40.0m of the boundary. I note that this neighbour has been notified of this application, including the 20.0m yard space, but has not submitted.

- [91] The building platform for Lot 2 is long and narrow, and is of irregular shape. It will also be within 10.0m or so of the new boundary shared with proposed Lot 1. The effects of this yard encroachment will be internal to the subdivision, and is therefore acceptable.

- [92] The building platform for proposed Lot 3 has been placed at the northeast corner of the proposed lot, next to Riccarton Road East and 20.0m from the boundary with 80 Riccarton Road East, and 85 and 87 Main South Road. This platform is shown as measuring 40.0m by 40.0m (1600m²), and will also be 20.0m from the northeast boundary. Where this northeast boundary fronts Riccarton Road East, the 20.0m yard is compliant with the District Plan requirements. Where it abuts 84 Riccarton Road East, it will breach the yard space by 20.0m. All the neighbouring landowners have been notified of the application, but only one has submitted and that in support of the application.

- [93] The application plan shows a larger square around the proposed building platform for Lot 3. This is labelled 'suitable building area', and identifies geotechnically stable land as determined by Dr Lindqvist's report. Again, as the imposition of the proposed building platforms is primarily for geotechnical reasons, it is feasible that a dwelling on Lot 3 could be built outside of the proposed platform, provided the ground is stable. If a landowner chose to do so without wanting to obtain neighbours' affected party approvals, the 40.0m yard spaces would need to be maintained. In the case of Lot 3, the lot is not wide enough to accommodate 40.0m yards to the north and south as well as a house of any size, so it is not definite that a house could be built elsewhere on-site. A 1600m² building platform is not, however, particularly tight, and should provide plenty of scope for house design and some flexibility in house position.

Landscape (6.7.25)

- [94] The subject site is outside of any landscape management area, and therefore there are no specific controls on siting or the design of structures. The proposed subdivision will, however, create undersized Rural-zoned sites on a relatively prominent piece of land, and the effects on the landscape from this density of development should be considered.
- [95] The application does not discuss landscape effects except to note that the subject site is not in a landscape management area but the ridgeline within the site is visible from State Highway 1 and land to the southwest. It is also seen as a foreground or middle ground element in many views towards Saddle Hill. The applicant considers that the proposed dwellings will be seen against a backdrop of land, specifically Saddle Hill. Conditions on building design, height, colours, landscaping and earthworks are expected to ensure that buildings are sympathetic to the form, character and scale of the landscape.
- [96] Council's Landscape Architect has considered the application. He notes that the subject site is on a prominent and quite widely visible minor ridge in the middle section of the northwest facing slope below Saddle Hill. The subject site is outside the Saddle Hill Landscape Conservation Area (SHLCA), but the Landscape Architect considers that the establishment of dwellings on the subject site would have a visual impact, particularly in regard to distant views of Saddle Hill. The Dunedin City District Plan notes the following "Features and Characteristics to be Conserved" within the SHLCA:
- *The visual dominance of natural landform and other natural elements (such as remaining indigenous vegetation) over cultural or human-made landscape elements, e.g. buildings or plantations.*
 - *The extent, integrity, coherence and natural character of the major natural elements such as landform, streams and areas of indigenous vegetation.*
 - *The extent and quality of views from the principal public routes and viewpoints.*
 - *The skyline generally defined by natural elements.*
 - *The following significant landform features listed in the NZ Geological Society Geopreservation Inventory for the Otago Region:*
 - *Saddle Hill.*
- [97] The Landscape Architect considers that the proposed development of the subject site with rural-residential development will have a potential adverse effect on the SHLCA when the extent and quality of views from public routes and viewpoints on the Taieri Plains towards Saddle Hill are considered. He is of the opinion that the adverse effects on rural character and visual amenity values will be more than minor. The proposed subdivision and subsequent development of the new lots would introduce an intensity of development which would not only be potentially very visible from areas immediately adjacent and further out to the northwest, but would also introduce a visually cluttering effect of built form not anticipated by the Plan. The Landscape Architect considers that the proposed development is not 'in-fill' housing. Visually, the hill is predominantly open and grassed, and when viewed from the north-westerly direction, there are no obvious adjacent dwellings other than those along the main road on residentially zoned land.
- [98] As noted above, the effects of a house on the building platform of proposed Lot 1 can be assessed with some confidence as there is already a building in this location. It was not originally intended as a house, and therefore it did not require consent for it to be built outside of the approved building platform. Consent was required to use it as a house. Although the consent identifies it as a 'temporary' house, there is no time limit to its use as a house imposed, and no reason to suppose the building itself will be removed once the actual house is built on the subject site.

- [99] The temporary house is a light-coloured, two-storey structure situated on the ridgeline. It is particularly prominent when viewed from Riccarton Road West by traffic heading southeast. It is also framed against a dark background of pine plantation, further accentuating its visibility. At closer viewpoints, it has a backdrop of sky. It is worth noting that, in comparison, the house of 86 Riccarton Road East is closer to the road, is slightly lower on the hillside, and is of a very similar design to the temporary house, but has a far lesser impact visually on the landscape. It is my opinion that this is largely due to the colours of the building. The consent LUC-20016-369384/A (and the original consent RMA-2006-369384) does not impose any position, design or colour controls on accessory or farm buildings, which perhaps explains how the quite-pronounced visibility of the 'temporary' house has eventuated.
- [100] A house is anticipated for the building platform of proposed Lot 2 regardless of whether or not this subdivision consent is granted. The proposed building platform for Lot 2 is the existing approved building platform for the subject site, and the existing dwelling on the subject site is only 'temporary' until a purpose-built house is built. It is therefore expected that the purpose-built house will be constructed within the approved building platform. This approved building platform is also on a ridgeline position and, depending on the viewpoint, a house in this platform may be framed against the skyline. The house will be widely visible, but consent controls on location, building dimensions, nature and colour of the materials, earthworks and landscaping should go some way to mitigating its visibility on the hillside. In summary, regardless of whether this subdivision consent is granted or not, buildings in the positions of the building platforms of Lots 1 and 2 should be expected. Residential activity on both, is not.
- [101] The house on proposed Lot 3 will also be visible from the Taieri Plains, although it will be lower on the hillside and in closer proximity to a line of housing along the main road although still above them. Given that most people seek views and sunlight when the opportunity is available, I would expect that any developer of Lot 3 will decide to build as high on the hillside as possible. This would also maximise the distance between the new house and the neighbours at the same time. If the owner of proposed Lot 1 is agreeable to a reduced yard space, the house of Lot 3 could be built higher on the hillside than the building platform promotes. Therefore, I would not consider it a foregone conclusion that the future house of proposed Lot 3 will be tucked in behind the existing housing of Main South Road. I expect it to be visible from some distance, and it could be quite prominent on the hillside.
- [102] Council's Landscape Architect is of the opinion that the proposed subdivision will have adverse effects on rural character and visual amenity that is more than minor because of the visibility of the new dwellings and the density of development. I agree with this assessment, but note that a building for Lot 1 is already in place, and the building of Lot 2 should be expected regardless of whether or not this subdivision consent application is granted. However, a residence is usually framed within a context of landscaping and accessory buildings so, although the 'house' of Lot 1 is currently in place, it is not necessarily comparable to a purpose-built and permanent residence. The house and accessory buildings of Lot 3 will be additional development on the hillside. I consider that these three building sites will have adverse effects on the rural landscape and character which are more than minor because of their prominence and overall density of development.

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

- [103] Proposed Lot 1 will utilise the existing driveway to the subject site which is accessed via rights of way over 115 Riccarton Road East. Riccarton Road East is sealed as far as the commencement of the private access. Thereafter, the access is gravelled. The right of way utilised by the subject site also serves 86, 90 and 100 Riccarton Road East and is approximately 4.0m wide over its narrowest stretches.

- [104] Council's aerial photographs and GIS system indicate that this shared driveway is partially formed on 84 Riccarton Road East, over a length of approximately 70.0m, despite having no obvious easement for this purpose. It is possible that the GIS information is distorted and the driveway is entirely formed within Lot 20 DP 341800, being 115 Riccarton Road East. I do not consider any existing encroachments by the driveway on neighbouring properties, should this be the case, to be a critical element of this application. If occurring, it is an existing situation which can be rectified if necessary as there is approximately 5.0m legal width available within 115 Riccarton Road East.
- [105] A new access will be created to proposed Lot 2 at the southwest corner of the subject site. Lot 2 will also utilise the right of way over 115 Riccarton Road West, but will do so for a further 200m or so (over Lot 31 DP 341800). The formed width of this extra right of way length is generally 3.5m. A track of sorts has previously been created within the subject site from the southwest corner and climbing the southern slope in a northeast direction. This will serve as access to Lot 2.
- [106] Access to Lot 3 will be directly from Riccarton Road East, at the north-eastern corner of the subject site. There is an existing crossing place at this location. The access will be upgraded and sealed from the edge of the carriageway to a distance at least 5.0m inside the property boundary.
- [107] Council's Transportation Planner/Engineer has considered the application. He notes that the entrance to the right of way is located to the south of the subject site, at the termination of the Council-maintained Riccarton Road East formation. The right of way formation is sealed to approximately 10m within private property, from the legal road edge, and is mostly formed to a width of approximately 4m. Transport considers these existing access provisions to be acceptable, noting that the proposal will likely result in only a minor increase in traffic using the right of way. No submissions from other right of way users have been received objecting to the proposed subdivision.
- [108] The Transportation Planner/Engineer recommends that there be an advice notice on any consent issued regarding the formation requirements for any driveways within Lots 1 and 2. He also considers it appropriate for the access requirements for Lot 3 to be assessed at the time of any building consent or resource consent application for any future development on this proposed lot.
- [109] Overall, Transport considers that the proposal will have no more than minor adverse effects on the safety and functionality of the transport network, subject to an advice notice on the access formation standards.

Archaeological Sites (8.13.16)

- [110] There are no known archaeological sites on the subject sites, and neither Kai Tahu ki Otago nor Heritage New Zealand has submitted on the application. It is therefore accepted that there is unlikely to be any pre-1900 archaeological sites affected by the proposed subdivision. However, should any archaeological material be uncovered during earthworks, the applicant will need to obtain an archaeological authority before continuing further. This matter is administered by Heritage New Zealand in accordance with the Heritage New Zealand Puhure Taonga Act 2014. An accidental discovery protocol should be included as either a condition or advice notice.

Hazards (18.6.1(t))

- [111] The slopes of Saddle Hill are recognised by the Council's Hazards Register as being subject to land instability. This is also addressed by the consent notice on the title of the subject site which seeks to maintain the stability of the slopes through controls on planting and the positions of building sites.

- [112] The application was submitted with a geotechnical report prepared by Dr Jon K Lindqvist dated 11 April 2016. A plan attached to this report was amended on 18 May 2016 so as to show the entire area of shallow slides on the site, and resubmitted to the Council on 20 May 2016, after notification of the application. Council's Consulting Engineer, MWH, has therefore had the opportunity to view the amended report, but the submitters have not.
- [113] Dr Lindqvist's report describes the geology of the landform of the subject site, and notes that the selection of a building area is complicated by a broad area of shallow slides that have developed in the loess subsoil cover upslope of proposed Lot 3. The associated patches of hummocky ground are confined to the western two-thirds of Lot 3. The area of relatively smooth ground with gradients of 14° to 17° (reducing down slope) is considered to be the most suitable ground of a new house build. The report concludes that the eastern-most portion (approximately one-third) of Lot 3 is considered suitable for a house platform, and recommends piles or concrete footings be placed directly on schist or on a correctly designed hard fill pad on schist. Dr Lindqvist also recommends that drainage systems are installed to intersect and remove any surface water or spring water flow that might affect the stability of the ground in the vicinity of the building.
- [114] Council's Consulting Engineer, MWH, has considered the application in relation to the Hazards Register, street files, and available aerial photography. He notes that the Hazards Register shows this land as being subject to 10116 – Land Stability (land movement) and 11589 – Land Stability (land movement). The north facing slopes have been mapped on the McKellar geological map as being subject to slips. The GNS Landslide mapping classifies this as with unknown activity, likely certainty and resulting moderate to high sensitivity.
- [115] The Consulting Engineer notes that approximately two-thirds of the subject site is on a north-facing slope above State Highway 1, up to a ridgeline, and then the site slopes southwards. There are two barns on-site, one of which is being used as a temporary house. The Consulting Engineer advises:
- *Slopes over the "suitable building area" on proposed Lot 3 are moderate to steep, at 3.4h:1v (16.5°) according to DCC LIDAR Contours;*
 - *Slopes just to the north and south of the "Existing Building Platform" on proposed Lot 2 are steep, to very steep, at 1.5h and 1.6h:1v ($32-34^{\circ}$), but the building platform itself is set upon a raised flat surface. Whilst there are obvious signs of soft and more recent slumping on the north facing slope, the crests of these features appear to lie further than 10m away from the proposed platform.*
 - *Slopes to the east of the proposed dwelling platform on Lot 1 are steep, but have been addressed by Dr Lindqvist following earlier advice from MWH (attached for information).*
- [116] MWH has reservations about development on steep slopes, particularly where there are previously mapped signs of instability. The Consulting Engineer notes that Lindqvist has undertaken a detailed walkover reconnaissance, and has mapped individual slide scarps. The Consulting Engineer disagrees with Dr Lindqvist's interpretation that these are distinct failures, as the McKellar mapping showed that these are more likely to be the lateral scarps of a much larger feature extending upslope to within 15m of the existing building platform on proposed Lot 2. Dr Lindqvist's report has since been amended to include the presence of the larger failure feature.
- [117] The Consulting Engineer notes that the application acknowledges the risks of land instability, and proposes a suitable building platform on the northeast corner of Lot 3, clear of any previous signs of instability. The Consulting Engineer agrees that this platform is suitable, but stresses that MWH would be reticent to entertain further subdivision of Lot 3 in the future.

- [118] The existing building platform on proposed Lot 2 may have previously been delegated, but remains at some risk, due to the proximity of steep slopes exhibiting signs of previous movement. However, the Consulting Engineer considers that this platform appears to be set back approximately 10m or more from the existing scarp features. The proposed 20x15m building platform on proposed Lot 1 has previously been discussed and confirmed as suitable (note, the lot numbers have been incorrectly assigned in the Consulting Engineer's comments).
- [119] MWH recommends advice for the consent and new titles regarding the known previous land movement and the need to site development away from any signs of instability. There are also recommendations for the undertaking of earthworks during the development of the new lots, as well as ensuring there is professional supervision of the works.
- [120] The Otago Regional Council (ORC) has submitted in opposition to the proposal, partly because of risk from natural hazards. The ORC has identified the land instability issues with this land, and has noted that the application only provides recent geotechnical assessment of one of the proposed lots. The previous assessments for the building platforms of Lots 1 and 2 was considered as part of previous consents in 2004 and 2006, but have not been submitted with this application.
- [121] The ORC is concerned that the geotechnical report submitted with the application is insufficient for the Council to make an informed decision on this subdivision proposal. The ORC identifies the omission of the Lindqvist report to identify the greater area of instability (since rectified), and notes that there is no assessment of global stability on the property. There is extensive land instability in the surrounding area, including across all three proposed lots. There is no evidence that excavations, ground test or subsurface investigations undertaken on the proposed building platforms. The ORC has requested that the Council decline consent unless it is satisfied that any natural hazards can be appropriately mitigated, among other matters.
- [122] I note that the proposed subdivision will divide the landslide feature between the three new lots. While Council's Consulting Engineer has not identified this as an issue, a subdivision proposal from 2005 (RMA-2005-369726) for a property approximately 1km to the east of this subject site (and also on the Saddle Hill north-facing slopes) was not supported by MWH because the landslide features would be contained within multiple properties making practical management of the land difficult. The subdivision application was subsequently withdrawn. It is undesirable to have the stability of one property negatively influenced by a neighbouring landowner failing to undertake or maintain mitigation measures to maintain the stability of the slope within their property.

Earthworks (17.8)

- [123] No consent for earthworks has been made with the subdivision application. Earthworks will need to be undertaken to form the new accesses to proposed Lots 2 and 3, and the building platforms, but these can be assessed at the time of the development proposals for any new lots created. Accordingly, this consent does not address any earthworks for this subdivision associated with the development or redevelopment of the new lots, or earthworks for the formation of any new access, manoeuvring areas, or retaining walls (should any be required). Should future earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

Physical Limitations (18.6.1(k))

- [124] The three proposed lots are all of practicable size and dimension to accommodate a residential unit and accessory buildings. The applicant has also identified building

platforms for all three proposed lots which are considered to be geotechnically stable. The Otago Regional Council is not convinced that the geotechnical investigations for the building platforms on Lots 1 and 2 are recent enough to be relied upon with complete confidence, but Council's Consulting Engineer has not identified any concerns with the building platforms on Lots 1 and 2. Accordingly, it is my opinion that the proposed subdivision is unlikely to create any new lot having physical limitations rendering it unsuitable for future use, but note that land use consent is required for a number of yard breaches as the new sites are too small for residential activity which maintains side and rear yards of 40.0m.

Amenity Values (8.13.5)

- [125] 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"

- [126] The proposal is for the development of Rural-zoned land in accordance with Rural-Residential zone expectations. While the placement of dwellings within this environment is not entirely unexpected, it is the density of development and the associated changes in landscape which have the potential to adversely affect the amenity values of the Rural zone and area. Accordingly, the assessment on amenity values needs to be viewed in the context of the zoning.
- [127] The application describes the site of 82 Riccarton Road East as being unlike the other 6 hectare sites in this vicinity as it:

" ... adjoins an area where non-complying rural allotments dominate to the point that the character of the area is not rural. These allotments sit to the immediate east (on both sides of Riccarton Road East) of the subject site. While they are zoned Rural, they have areas of between 0.4ha and 2ha."

- [128] The character of this area, which largely determines the amenity values, was discussed at some length in my evidence for the Environment Court hearing for the proposed subdivision of 103 Riccarton Road East and 4A Braeside (ENV-2013-CHC-93). Like this application, that subdivision proposal sought to subdivide Rural-zoned land on the lower slopes of Saddle Hill into rural-residential sized lots. I have attached the plans prepared for the Environment Court in Appendix E of this report. Figure 2 represents the most relevant data in respect of the immediate area of 82 Riccarton Road, and shows Rural-zoned land colour-coded according to lot sizing.
- [129] As noted by the applicant's agent, the Rural-zoned land in close proximity to the subject site is a mixture of sizes and generally under 15.0ha. In addition to those sites identified on Figure 2 as being undersized, the Court granted consent to the subdivision of the northwest parcel of 103 Riccarton Road (boundaries dotted on the plan) into two lots less than 3.0ha in size, maintaining the southeast parcel as a separate property of over 9.0ha. Accordingly, although that subdivision has not yet progressed, the northwest parcel should be considered as two sites, both coloured orange. Lot 6 DP 400513 was at that time also part of 103 Riccarton Road (although separated physically from the rest of the title by the road), and had already been granted consent as SUB-2010-28 to form a site of less than 2.0ha. It has since been given its own title and should be coloured red.
- [130] The subject site is therefore surrounded by Rural-zoned sites of less than 15.0ha, and is immediately to the south of a strip of Residential 1 zoned land. With the exception of the land of 103 Riccarton Road East, the undersized sites are all historical in nature and most were complying sites at the time they were created or pre-date planning

controls. This includes the subject site and the three 6.0+ ha sites to its west and south.

[131] The four sites of DP 23157 are sites of 2.0ha (with a more recent boundary adjustment dropping the area of one to less than 2.0ha) created in 1993 when the Transitional Plan was the relevant planning document. The proposed subdivision will subdivide the subject site into comparable sites except that these existing 2.0ha properties have reticulated services whereas the proposed lots are to be self-serviced.

[132] I agree that the surrounding sites are therefore all small Rural sites or Residential zoned properties. I also note that, with the exception of the subject site, the new site of 84 Riccarton Road East, and the 6.0ha property to the west, 86 Riccarton Road East, the undersized sites are of limited visibility. The subject site is the most prominent of all the undersized Rural-zoned properties when viewed from the Taieri Plains (being the predominant viewing theatre), and all three proposed residential units for this subdivision will be clearly seen from many locations, and particularly Riccarton Road West.

[133] When the Court granted consent to the subdivision of 103 Riccarton Road East, it noted:

"The proposed building platforms on Lots 1 and 2 are sympathetically sited. They are on gentle gradients and located in places that give low levels of visibility ... houses on proposed Lots 1 and 2 would be difficult if not impossible to see from anywhere on the Taieri Plains" [paragraph 43].

[134] The Environment Court issued a second decision for the same case in respect of 4A Braeside, declining consent to subdivide it into seven 2.0ha blocks. In paragraph 72, the Court stated:

"The character of views of the lower slopes of Saddle Hill will be modified by the additional buildings at 4A Braeside ... While we agree that there may not be a loss of amenity overall, we do judge that there will be more than minor loss of rural character to the closer views. Finally, we find that the visual dominance of natural landform and natural vegetation will be reduced in more than a minor way."

[135] My understanding of these two statements is that the Environment Court was prepared to grant consent for the subdivision of Rural-zoned land into undersized lots at least in part because of the limited visual effects and impact on rural character, whereas the subdivision of the more visible land was declined. In respect of this proposed subdivision, although the subject site is surrounded by, or will be surrounded by undersized Rural-zoned sites, it presents a far more visible face to wide view than these other properties. The surrounding development is either very low on the hillside, or tucked away behind topography or vegetation.

[136] The most notable exception to the above observation is possibly 84 Riccarton Road East (Lot 6 DP 400513 on Figure 2) which has a house site, currently undeveloped, at about the 70m contour and directly in line with Riccarton Road West. There is a second platform in front of it at the 60m contour. I would expect any future dwelling on either platform to be therefore very visible, although less so from more oblique viewpoints. The future dwelling of proposed Lot 3 will be lower than this future dwelling. The proposed building platform for Lot 3 sits between the contours of approximately 44m and 54m, and even if a dwelling is built higher on the slope of proposed Lot 3, the upper boundary is still only about the 66m contour. A dwelling built on Lot 3 will probably be lower than any built on 84 Riccarton Road, but will still be further forward on the hillside and not screened by topography or vegetation on any side.

- [137] It is my view that the surrounding undersized Rural-zoned sites should not be overly influential in any decision to grant consent to this subdivision, should that eventuate. Almost all of the undersized lots are either low on the hillside or screened from easy view, whereas the subject site contributes to the character and amenity values of this area because of its prominence on the lower slopes of Saddle Hill and its rather stark pastoral appearance. Dwellings on this hillside will not be necessarily unattractive buildings, but their presence, along with any landscaping around their curtilage, will make an impact.
- [138] In the case of proposed Lots 1 and 2, it could be said that the horse has bolted. Lot 2 has an existing approved building platform at the ridgeline which can be developed tomorrow, and there is an existing building on the proposed platform of Lot 1, also at the ridgeline. As it was not a dwelling at the time it was constructed, the conditions of RMA-2005-369384 controlling the design and colour of the building were not triggered, and no landscaping to soften its presence has been planted. The variation to this consent, allowing the farm building to be used for residential purposes, did not negate these conditions but did not attempt to retrospectively enforce them either. It should be noted that the variation was granted on the basis that the use of the barn as a house was temporary, and in this respect, the residential development of the immediate curtilage is supposedly less relevant.
- [139] While the structure of the temporary residence might not be removed once the real house on-site is built, it should not be argued that the effects of a house in this location are established. This proposal seeks to intensify the level of development to a degree not anticipated by either the current or proposed Plans, and for this reason, regardless of the appearance of the structure, will have adverse effects on the amenity values of the Rural zone.
- [140] The dwelling of proposed Lot 3 is a structure not anticipated under the current or proposed zoning for the subject site. It is my view that this dwelling will have adverse effects on the amenity values of the Rural zone which are more than minor because it is rural development at a density not anticipated by either District Plan, and because it will be relevantly prominent on the hillside, albeit at a low level. There is housing below this building site, but this housing is on Residential 1 zoned land. The District Plan does not provide for transitional areas where development blends from one zone to another, and the proposed development of Lot 3 will extend the residential development into the Rural zone in a location where none is expected. However, although the house is near other housing, none of these property owners have submitted except one in support of the application, so they appear to have few concerns about any adverse effects on their own amenity.

Cumulative Effects

- [141] 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*".
- [142] Cumulative effects are, in my opinion, particularly relevant for this proposal as the subject site is already an undersized site, there are other comparable sites in the immediate vicinity, and the Proposed Plan seeks to make the minimum lot size for this zone even larger than the current District Plan specifies. Therefore, any subdivision or additional development of this land will introduce an intensity of residential development for this zone not in accordance with its rural zoning. If this is to change the character of the area or zone, then it will have cumulative effects which are more than minor.

- [143] The applicant does not consider that the proposal will give rise to cumulative effects of any significance as the proposed additional residential development will be 'effectively infill development of land not suitable for productive rural activity.' The application promotes this area as having a residential lifestyle nature with low density development being the predominant land use, where permanent occupation of the land likely to improve the quality of the environment by introducing more vegetation.
- [144] Returning to the Environment Court decision for the subdivision of 103 Riccarton Road East, the Court advised in paragraph 65 that the integrity of the District Plan had been lost in the vicinity of 103 Riccarton Road East but not more widely. *"This is exacerbated by the fact that the 'key elements' of rural character which the district Plan seeks to maintain ... have already been reduced in the six hectare lots on the southern side of Riccarton Road East ..."*. In other words, the subject site and its three immediate neighbours have already compromised the rural character of the immediate area because of their size. Reducing this size further will therefore compound the impact on the character of the Rural zone. If this there then used as a reason to justify further subdivision of other land, then it will have had cumulative effects which are more than minor.

Sustainability (6.7.1)

- [145] 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.
- [146] It is my opinion that the proposed subdivision will have adverse effects on amenity which are more than minor. Not only will it increase the density of development beyond that anticipated for the Rural zone, but that development will occur on the more prominent lower slopes. Housing in this zone is not expected at this density and will have adverse effects on rural amenity and character due to reduction in rural openness.
- [147] The Consents and Compliance Officer, Water and Waste Services Business Unit, has not identified any concerns about the sustainability of the existing service infrastructure. The proposed lots will all need to be self-serviced and, as such, there are no water or sewage disposal demands on Council's infrastructure. Concerns about discharge of wastewater and/or stormwater to ground on a hillside subject to instability have been raised by the Water and Waste Services Business Unit, Council's Consulting Engineer, and two of the submitters. While the concerns are not considered fatal to the proposal, the wastewater and stormwater disposal from the new sites, and in particular Lot 2, will need to be managed appropriately.
- [148] Council's Consulting Engineer, MWH, has advised that there are suitable building platforms on all the proposed lots but has some concerns about development of the steeper land.
- [149] The Transportation Planner considers that the proposed subdivisions can proceed with no adverse effects on the safe and efficient use of the transportation network. The proposed subdivisions will utilise existing roading and private roading infrastructure, and are considered to be sustainable use of these assets.
- [150] Overall, I am of the opinion that the proposed subdivisions will be sustainable use of Dunedin City's physical and natural resources except that the proposed subdivisions will not protect the rural land resource and associated amenity values. The fragmentation of rural sites into smaller rural-residential sites will reduce the productive potential of the land, and the openness of the Rural area in this location.

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

[151] 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. 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.	It is my opinion that the proposal will not maintain the Rural character or amenity values of this area. Therefore the proposed subdivision is considered to be inconsistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The new lots will be self-serviced, and will utilise existing roading and rights of way infrastructure. 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.	The applicant has indicated a preference for Lot 3 to be able to connect to the reticulated services. This is not supported by WWS and would be considered unsustainable use of the water and wastewater networks.
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.	The proposed subdivision of the subject site does not, in my opinion, protect the natural and physical rural land resource. The implications for Saddle Hill Landscape Conservation Area are probably minor, but the fragmentation of the land and the visual impact on the Rural zone as viewed from the Taieri Plains is considered to be inconsistent 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 the land is not considered to be incompatible with rural land uses generally. There is no expectation that the proposed residential activity will be any more incompatible with rural land uses than the permitted residential activity which is already present in this location. The proposal is considered to be consistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

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

Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	and policy.
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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.	The subdivision proposal is considered to be inconsistent with this objective and policy. The land has limited value as rural productive land because of its site size and topography, but is used as pastoral land and has established vegetation. This is expected to continue except for the area to be occupied by the buildings and curtilage. The development of the Rural zoned land as residential properties is not in accordance with the zone expectations, and is not based on the productive use of the site.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The proposed subdivision is considered to be contrary to this objective and policy. It will introduce development into the Rural zone at a density far greater than that anticipated by the District Plan, and will change the zoning of the land in effect if not in fact. It will not maintain the characteristics of the Rural zone, and will be visible as part of the Saddle Hill landscape (although outside of the Landscape Conservation Area), particularly from the Taieri Plains.
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.	
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 is considered to sustainably manage the existing Council infrastructure. The proposal is considered to be consistent with to this objective and policy, provided all the lots are self-serviced.
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.	
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposals are considered to be consistent with this objective. The proposed residential activity is not expected to conflict with any of the adjoining rural activities.

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 subdivisions will create lots which are expected to be self-sufficient for water supply and effluent disposal. There are concerns, however, that the discharging of stormwater and effluent from the new dwellings will destabilise the hillside. On the basis of available information, the proposal is considered to be consistent with this policy.
Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activity is an expected component in the Rural Zone, although not on sites at the sizes proposed by this application. The subject site is already significantly undersized for the Rural zone. The issue is not so much whether the residential activity is inappropriate for the zone, but rather whether it is appropriate for this location, and at this density. It is my opinion that the development proposed is not appropriate at this density, and therefore is inconsistent for this subdivision proposal.
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 subject site and surrounding properties have few rural productive values under present land management practices. The proposed residential activity is not considered to adversely impact on rural activities. The subdivision proposal is considered to be consistent with 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 of the subject sites will have cumulative effects which are more than minor, and the proposal is therefore contrary to this policy.

Landscape

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objectives?</i>
Objective 14.2.1	Ensure that the City's outstanding natural features and landscapes are protected.	Saddle Hill has been identified in the District Plan as being a significant landscape that should be maintained, particularly where it is visible to a large number of people on the Taieri Plains and Mosgiel. The proposed subdivision is outside of this area and is low on the hillside but still proposed development that will be seen in the context of the Saddle Hill Conservation Area and the Rural zone generally. Council's Landscape Architect considers the adverse effects on the landscape will be more than minor, and it will impact on the Landscape Conservation Area. The proposed subdivision will introduce two additional residential activities into the Rural-zone, both having visual effects on the landscape, at a level of density not representative of the District Plan expectations for the zone or area. I consider that the proposal will be inconsistent with this objective and policy.
Policy 14.3.1	Identify Dunedin's outstanding landscapes, and identify and protect their important characteristics (as listed in part 14.5.1 of this section).	
Objective 14.2.3	Ensure that land use and development do not adversely affect the quality of the landscape.	No more than one residential activity for this site is currently consented, and none can occur as of right. Development of the proposed new lots will involve an increase in housing within this Rural environment, therefore adversely impacting on the open environment, the visual quality of the lower slopes, and the Rural
Policy 14.3.3	Identify those characteristics which are generally important in the rural area (as listed in part 14.5.3 of this section) and ensure they are conserved.	

Objective 14.2.4	Encourage the maintenance and enhancement of the quality of Dunedin's landscape.	character of this area. The proposal is considered to be inconsistent with these objectives and policies.
Policy 14.3.4	Encourage development which integrates with the character of the landscape and enhances landscape quality.	

Hazards

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	Geotechnical investigation of the sites has satisfied Council's Consulting Engineer that subdivision consent should not be declined for reasons to do with land stability, although housing is to be confined to the building platforms and subsoil investigations are still recommended for foundation design. Dwellings are not to be constructed outside the proposed building platforms unless further geotechnical investigation proves land stability is not an issue. The proposal is considered to be consistent with this objective and policy. There are concerns with the discharge of stormwater and/or effluent from Lot 2 destabilising the hillside below the building site.
Policy 17.3.2	Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	No earthworks have been applied for as part of this subdivision and land use proposal, but will be required in order to develop the proposed building platforms, and access to Lots 2 and 3. Lot 2 is a relatively level building site up-hill from a wide area of instable land. The building platform of Lot 3 is on sloping ground and will be visible from viewpoints on the Taieri Plains. The future earthworks, if managed appropriately by a suitably qualified person and confined to stable areas, are not expected to destabilise the hillside, but could have adverse effect visually on the landscape.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The proposal seeks to subdivide land within the Rural zone at a density exceeding expectations. This fragmentation of the Rural zone is not considered to be sustainable management of the zone resources or characteristics, but will not inhibit further subdivision in the area. The proposal is considered to be inconsistent 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 to be created.
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.	The application was submitted with a geotechnical report for Lot 3. 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.	Submitters have raised concerns about stormwater and effluent disposal causing instability of the hillside. Council's WWS department has also noted the possible adverse consequences of discharges to the ground, and have recommended a condition requiring

		specific design of servicing to avoid this occurring. Council's Consulting Engineer requires suitable setbacks for development from landslide features. In the absence of any definite specialist advice to the contrary, 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.	The proposal has been submitted with geotechnical report, and there are existing consent notices and encumbrances on the titles of the subject sites to minimise land instability risks. Building platforms have been selected for land stability purposes. Both proposals are considered 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 use promoted by the applicants for the new lots does not recognise the rural land potential of the sites and is not in accordance with the District Plan expectations of the zone. The proposal is considered to be inconsistent 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 technical breaches.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The subdivision will have some impact on the Landscape Conservation Area although it is sited outside of this area and there are no associated rules applying. The subdivision and development of undersized sites will have adverse effects on the quality of the Rural-zone landscape as the development will occur at a relatively prominent location, therefore not avoiding the City's natural and physical resources. This proposal is considered to be inconsistent 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 proposal is for new development of Rural land where the proposed lots are to be self-serviced. There will be no need for an extension of service infrastructure to serve the subject sites. The roading, including private access ways is, for the most part, existing and does not need to be upgraded. The proposal is considered to be consistent with this objective and these policies.
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.	There are concerns that the disposal of effluent and stormwater could destabilise the hillside and adversely affect neighbouring properties. This disposal of services will need to be carefully managed, or the proposal has the potential to be contrary to this policy.

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.	The proposed subdivisions will utilise existing roading and private roading infrastructure. These have been assessed by the Transportation Planner, and are considered to be formed to acceptable standards for the intended use. Lot 3 will have a new access directly onto Riccarton Road East but is not considered to be inappropriate or unsafe in the location proposed. Transport considers that the
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.	proposed subdivisions will have no more than minor adverse effects on the transportation network. Accordingly, the proposal is considered to be consistent with these objectives and policies.
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Proposed Plan

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

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	No new roading or rights of way are proposed but new accesses will be constructed to proposed Lots 2 and 3. The access to Lot 2 is partially formed already, and will be on the southern slope of the ridge where it will not be visible from the Taieri Plains. The access to Lot 3 will be directly of Riccarton Road East, low on the hillside. Neither new access is considered to have adverse effects on the transportation network and amenity of the area which are more than minor. The proposal is considered to be consistent with this objective.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	There are no changes proposed for the roading network except for a new access onto Riccarton Road East. The proposal is considered to be consistent with this policy.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development of the new lots is not expected to adversely impact on the transport network. Lots 1 and 2 will utilise existing rights of way, and Lot 3 can access Riccarton Road East directly in a position where it is not considered to adversely affect the safe operation of the road. The proposal is considered to be consistent with this objective and these policies.
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport network.	

Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The new lots will all be self-serviced, therefore not placing any demand on Council infrastructure. The applicant's preference for Lot 3 to connect to reticulated services is unlikely to be supported by the WWS department, but is not required for the subdivision and development of Lot 3 to proceed. The proposal is considered to be consistent with this objective and policy.
Policy 9.2.1.3	Require subdivisions to provide any available water supply and wastewater public infrastructure services to all resultant sites that can be developed, unless on-site or multi-site services are proposed that will have positive effects on the overall water supply and/or wastewater public infrastructure services, or any adverse effects on them are insignificant.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	
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.	
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 new sites are to be self-serviced, and the lots are considered to be of adequate size and shape for this to be able to occur. Land instability issues, however, could be exacerbated by the discharge of stormwater and effluent to the hillside, and could adversely affect downhill properties. Adequate water supply will need to be kept at all times for fire-fighting purposes. Any disposal system will need to be designed by an appropriately qualified person, keeping in mind the limitations of the site. If this is done, the proposal is considered to be consistent with this objective and these policies.

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 subject site is subject to land instability issues and there is an area on-site which is to be managed in accordance with a land management plan as registered on the computer freehold register. It is not certain that the land management plan has been implemented as fully as intended. This application has been submitted with a geotechnical report for Lot 3, and Lots 1 and 2 have previously been assessed. All three building platforms are considered stable for the purposes of residential activity. The proposed subdivision will establish sensitive activities (residential use) in a hazard 2 zone, but the risk is considered to be low provided building is confined to specific areas and the disposal of stormwater and effluent is managed appropriately. The proposal is considered to be consistent with this objective and policy.
Policy 11.2.1.5	In the hazard 2 overlay zones, only allow the establishment of sensitive activities where the scale, location and design of the activity or other factors means risk is avoided or is no more than low.	
Policy 11.2.1.6	In the hazard 2 overlay zones, only allow the establishment of potentially sensitive activities that are not otherwise permitted in the zone, where all of the following are met: 1. the activity has a critical operational need to locate within the hazard 2 overlay zones and locating outside the hazard 2 overlay zones is not practicable; and 2. the scale, location and design of the activity or other factors means risk is avoided, or is no more than low.	
Policy 11.2.1.12	In all hazard overlay zones, or in any other area that the DCC has good cause	No future earthworks have been identified as part of this application, but some earthworks

	to suspect may be at risk from a natural hazard (including but not limited to a geologically sensitive mapped area (GSA)), only allow earthworks - large scale or subdivision activities where the risk from natural hazards, including on any future land use or development, will be avoided, or no more than low.	will be required to develop the new lots. The proposed earthworks should only be occurring on stable ground, and should not destabilise the hillside if managed appropriately.
Policy 11.2.1.16	Only allow earthworks - large scale in a land instability overlay zone where they will not have adverse effects on land instability nor create, exacerbate, or transfer risk from natural hazards.	

Rural Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	The subject site is an undersized Rural-zoned property with limited productive worth under current management practices. The residential activity on this property is not associated with farming activity except in a minor way. The proposed lots will be smaller again, and the proposed residential development of the new lots is not for the purpose of supporting farming activity. The proposed residential activity is well above the density anticipated for the Rural zone under both the current and proposed District Plan. This subdivision is not for the disposal of a surplus dwelling. The proposed subdivision and residential development is considered to be inconsistent with this objective and these policies.
Policy 16.2.1.4	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.	
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.	
Objective 16.2.2	The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: 1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised; 2. the residential character and amenity of adjoining residential zones is maintained; and 3. a reasonable level of amenity for residential activities in the rural zones.	The proposed subdivision is not expected to give rise to conflict between residential and rural activities. Some residential activity in the Rural zones is anticipated and generally is not considered incompatible with farming practices, and in particular, grazing of animals. In this case, Lot 3 is adjacent to residential properties, and should not impact negatively on these neighbouring sites. The proposal is considered to be consistent with this objective.
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The bulk and location breaches of the proposed building platforms will be within 20.0m of adjoining properties outside of the subdivision, and less than 20m in respect to other lots within the subdivision. The yard breach for Lot 2 is an existing situation which does not change with this proposal. The dwelling on Lot 3 will be 20m from the residential properties below it. None of these property owners have submitted in opposition to the application. The proposal is

		considered to be consistent with this policy.
Objective 16.2.3	The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; b) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c) buildings that are rural in nature, scale and design, such as barns and sheds; d) a low density of residential activity, which is associated with rural activities; e) a high proportion of land containing farmed animals, pasture, crops, and forestry; f) significant areas of indigenous vegetation and habitats for indigenous fauna; and g) other elements as described in the character descriptions of each rural zone located in Appendix A7.	The proposed subdivision will intensify the density of development of this part of the Rural-Coastal zone to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to residential activity, and will be visible from a range of viewpoints on the Taieri Plains. 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 building platforms of Lots 1 and 2 are situated on the ridgeline and will be very visible. This is largely an existing situation as Lot 1 has a building in this position, and Lot 2 has an approved building platform. However, the proposal will have both locations developed with residential dwellings instead of just one. Lot 3's building platform is clear of the ridgeline but will be in a relatively prominent, albeit low, position on the hillside. The proposal is considered to impact on the visual amenity of the rural zone, and is inconsistent with these policies.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	
Policy 16.2.3.8	Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.	The subdivision is not considered to maintain or enhance the rural character and visual amenity of the zone. The proposal is contrary to this policy.

[152] As the Proposed Plan is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan.

[153] It is my view that the proposal is consistent with many of the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, sustainability of infrastructure, hazards and transportation. However, it is inconsistent with those of amenity of Dunedin, rural productive worth, landscape, and the subdivision of rural land. It is considered contrary to the objectives and policies concerned with amenity of the Rural zone.

Assessment of Regional Policy Statement and Plans

[154] In accordance with Section 104(1)(b)(iii) of the Act the Regional Policy Statement for Otago has been taken into account. In particular, the proposal was assessed against the objectives and policies of chapters 4: Manawhenua, 5: Land, 9: Built Environment, 11: Natural Hazards, and 13: Wastes and Hazardous Substances. The proposal is considered to be consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.

7. DECISION MAKING FRAMEWORK

Part II Matters

[155] When considering an application for resource consent, any assessment of the proposal to be made is subject to consideration of the matters outlined in Part II of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:

- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment";
- 6(b) "The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development";
- 6(f) "The protection of historic heritage from inappropriate subdivision, use and development."
- 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".

[156] With regard to Section 5(2)(a), it is considered that the proposed subdivision will not maintain the potential for rural use of the natural and physical land resource.

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

[158] With regard to Section 6(b), the subdivision and land use proposals will introduce two new residential units onto the landscape in addition to the consented (but as yet unbuilt) residential unit. None will be within the Landscape Conservation Area but all will be quite prominent on the hillside and are likely to adversely impact on the rural landscape values. The subdivision is considered to be inappropriate at this location, and at this density.

[159] With regard to Section 6(f), there is no known historic heritage on the subject sites. Neither Kai Tahu ki Otago nor Heritage New Zealand, being the two organisations most likely to have concerns about historic heritage, has submitted on the proposals.

[160] With regard to Section 7(b), it is considered that the proposed subdivision will fragment Rural-zoned land into Rural-Residential size sites, will be visually prominent, and will not maintain the rural land or the landscape resource.

[161] With regard to Section 7(c), it is considered that the proposed subdivision will adversely affect the Rural-zone amenity values and character due to the number of new dwellings proposed, the extension of development into the Rural zone from the Residentially zoned development at the base of the hill, and the visual prominence of the building sites.

[162] With regard to Section 7(f), it is considered that the proposed subdivision will change the quality of the environment to that of a different zoning, in conflict with the District Plan provisions.

[163] With regard to Section 7(g), it is considered that the Rural land resource is of finite character. The subdivision proposal seeks to fragment an already undersized Rural-zoned site into lot sizes more consistent with rural-residential zoning. It will not preserve the productive potential of the rural land, although the subject site has limited productive value to start with.

Section 104

- [164] 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 of the subdivision will have more than minor adverse effects on the rural environment.
- [165] 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 subdivision is considered to be generally consistent with most of the relevant objectives and policies of the District Plan, except where inconsistent with amenity values, protection of productive land and subdivision, and contrary to those relating to rural amenity values. Overall, I consider the proposal to be inconsistent with the objectives and policies of both Plans.
- [166] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraph [154] of this report it was concluded that the application is consistent with the bulk of the relevant objectives and policies of the Regional Policy Statement for Otago.
- [167] 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))

- [168] 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.
- [169] 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."

- [170] 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."

- [171] These have been matters 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'.

[172] 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."

[173] 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."

[174] 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 proposals 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.

[175] The applicant does not consider it entirely appropriate that the true exception test should be applied to this application on the basis that the applicant considers the proposal to be consistent with the relevant objectives and policies. However, if Council requires a true exception argument, the applicant maintains that the property is different from the majority of potential applications to establish residential activities in the Rural zone because:

- The location, topography and size of the site limit the use of the property for permitted uses.
- All neighbouring land is used for residential purposes on sites of various sizes, most of which are smaller than the subject site, and all substantially smaller than 15.0ha. Residential land use of the site is more in keeping with the existing land uses than a permitted activity would be.

[176] The setting of the 15.0ha minimum lot size for the Rural-zone was a deliberate decision made by the Environment Court in November 2004. The more recent Proposed Plan, notified in September 2015, has refined the minimum site sizes for rural land according to the characteristics of the different areas and the desired use and outcomes for this land. There are now seven rural zones in the Proposed Plan, with minimum lot sizing set from 25ha to 100ha. The minimum for the subject area is proposed to be 40.0ha. Not only have the minimum site sizes increased from 15.0ha, but the rule was given immediate legal effect on notification (only one of four such rules), indicating the importance the Council places on subdivision of rural land into blocks which are not obviously for productive purposes or which do not respect the open landscapes. The proposed subdivision therefore has potential implications for the integrity of not only the current District Plan but the Proposed Plan.

[177] The subject site is merely one of many 6.0ha sites created at a time when 6.0ha was the minimum site size for the Rural zone under the Planning regime of the day (refer Table 2 Appendix E). Most other undersized Rural-zoned sites are either historic in nature, or show up on Council-records as being recently-created sites but have more

complicated histories than the data indicates. These include boundary adjustments, amalgamations, and land severed from larger properties by the building of the State highway. There are also quite specialised subdivision proposals such as the Farm Park at Tumai where the overall density of development is maintained at 15.0ha per residential unit but the residential lots are small and clustered. Very few recently-created undersized lots are the result of subdivisions of compliant rural properties with the primary effect being the increase the residential density of development.

- [178] As noted above, I do not believe that the subdivisions which created 6.0ha blocks under the Planning regime of the day intended to produce independently economically viable farming properties. Most 6.0ha blocks are intended to be lifestyle properties where the openness and low-density residential use are as valuable as, if not more so than, the productive value of the land. I suspect that not all purchasers of such properties appreciate the work required to maintain a property of this size, and the often limited financial returns that will reward their efforts. However, the fact that the property is not a large farm of prime productive land does not, in my opinion, justify its subdivision into even smaller Rural-zone properties where the same arguments of limited productive worth and maintenance issues will apply. The District Plan already caters for those who wish to own 2.0ha sites through the Rural-Residential zones. The closest Rural-Residential zones to the subject site are shown with hatched lines (Figure 3 Appendix E), and analysis indicates there are still vacant sites within these zones.
- [179] The subject site has three comparable sites immediately next door, and there are eleven or so others fronting Main South Road (plus others behind) over a stretch of 1.5km (refer Figure 1 Appendix E). Smaller Rural-zoned sites in the immediate vicinity of the subject site are historical in nature or have been granted consent more recently by the Hearings Committee or the Environment Court. The very small residential sites along Main South Road (State Highway 1) and across Riccarton Road East are all zoned Residential 1. I agree that the subject site is surrounded by properties smaller than 15.0ha, and that the predominant land use is residential (even of the Rural-zoned land). However, it is a prominent site within that environment, and the implications of granting consent will, in my opinion, extend well beyond this subject site. I do not consider that the true exception arguments promoted by the applicant are sufficient to satisfy this test, and cannot think of any other arguments which would apply.

Non complying status (s104D)

- [180] 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.
- [181] It is my opinion that the subdivision will have adverse effects which are more than minor, and will be contrary to the objectives and policies regarding landscape and rural amenity. As such, I consider that the subdivision and land use proposals do not meet either test of Section 104D, and the Committee is unable to consider the granting of consent to either.

8. RECOMMENDATION

Subdivision SUB-2016-28

*That pursuant to section 34A(1) and 104B and after having regard to Part II matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **declines** consent to the **non-complying** activity for the subdivision of the land legally described as Lot 28 DP 341800 (CFR 171990) into three lots, at 82 Riccarton Road, East Taieri.*

Land Use LUC-2016-169

*That pursuant to section 34A(1) and 104B and after having regard to Part II matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of residential activity on new lots to be created by SUB-2016-28 at 82 Riccarton Road East, East Taieri.*

Should the Committee be of a mind to grant consent, however, I have recommended conditions for consent as Appendix 1 of this report.

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 82 Riccarton Road East will be more than minor for the following reasons:
 - a) The proposed subdivision will create three significantly undersized Rural-zoned lots more in keeping with Rural-Residential zone expectations. The density of development will be at a much higher ratio than the District Plans, current and proposed, promote for this land, and will be evident to wide view. The small sites and associated residential development has the potential to adversely affect the character of amenity values of the wider Rural zone as a result
 - b) The subject site is a prominent site at the base of Saddle Hill. Although not within the Landscape Conservation Area, the site forms part of the context of the landscape zone and will be seen in front of this area. The placement of dwellings on the ridgeline and the north-facing slope of the subject site will adversely affect the landscape values of the Rural zone and will impact on the wider view of Saddle Hill.
 - c) The Environment Court granted consent in 2014 for the subdivision of 103 Riccarton Road East so as to create two sites of approximately 2.0ha to 3.0ha. A significant contributing factor to this decision was the limited visibility of the proposed lots. A similar subdivision proposal for 4B Braeside was declined at the same time, partly because of the prominence of that site. The subject site has a very visible north face, and the proposed housing will be sited on this hillside either at the ridgeline or on the face itself. The proposed housing will be very visible from many viewpoints on the Taieri Plains, and particularly Riccarton Road West. It will not be integrated unobtrusively into the landscape.
 - d) The subject site is subject to known land instability issues. The applicant has identified three suitable building platforms, supported by geotechnical reports, where the building of houses of stable land is possible. However, there are concerns that the on-site disposal of stormwater and wastewater will destabilise the slopes and/or create drainage problems for properties at the base of the hill.
 - e) The size and dimensions of the proposed lots, and the position of the stable land within them, means that all three building platforms will be positioned partly within the yard spaces of the new lots. In the case of Lot 1, the yard breach is in respect to an internal boundary. Lots 2 and 3, however, will have the building platforms extending 20.0m into the yard space in respect of external boundaries. None of the immediate neighbours have submitted in opposition, and Lot 2's building platform is the existing building platform for the site, so the yard breaches could be considered acceptable. However, the fact remains that the proposed lots are of a size where it is unlikely they can be developed without breaching the yard spaces.
 - f) The landslide feature within the subject site will be subdivided so that all three new lots will contain a portion of this land. While the Council's Consulting

Engineer has not opposed this action, the subdivision will mean that the landslide cannot be managed as a whole; the action (or inaction) of one landowner has the potential to impact on a neighbouring property. I also note that the landslide area does not appear to have been planted to the extent promoted by the existing land management plan.

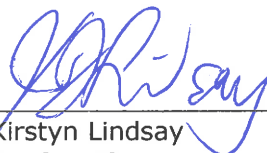
2. There is no true exception argument which would allow this application to proceed without creating an undesirable precedent for the Saddle Hill/East Taieri Rural zone and possibly Rural zones elsewhere. There are three highly comparable sites in the immediate vicinity of the subject site, and numerous others along Main South Road, all of which could promote the same argument for subdivision and development. The consequence of this could be a major change to the visual appearance and character the rural land in this location. If this hillside is to become a Rural-Residential zone (in fact or in effect), then it should be subject to a plan change proposal presented in a coordinated manner. However, the Proposed Plan, being a very contemporary indication of Council's plans for this area, has not proposed changing the zoning so as to facilitate smaller lots, but has proposed making minimum lot size much larger.
3. The Proposed Plan is subject to submissions and the new zoning, with its minimum site size, has not been finalised. While greater weight is to be given to the current District Plan, the Council needs to be careful of undermining the integrity of the Proposed Plan this early in the process. There are submissions both opposing and supporting the new minimum site sizes, so it cannot be assumed that these will be reduced as a result of the submission process
4. The proposal is considered to be inconsistent the objectives and policies of the District Plan relating to amenity and landscape.
5. It is considered that the proposal does not meet the Section 104D test of the Act. Accordingly, the Committee is unable to consider granting consent.

Report prepared by:

Report checked by:



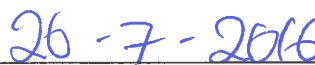
Lianne Darby
Planner



Kirstyn Lindsay
Senior Planner



Date



Date

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

DRAFT RECOMMENDED CONDITIONS: Subject to change.

SUB-2016-28

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 28 DP 341800,' dated 18 April 2016, and the accompanying information submitted as part of SUB-2016-28 received by Council on 28 April 2016 (and revised on 11 May 2016), except where modified by the following:*
2. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.*
3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *That the landscape feature within the subject site shall be closely planted in accordance with the land management plan prepared by Geolink Land Investigations (undated), previously attached to Consent Notice 6451339.15 on CFR 171990.*
 - b) *The Geolink Land Investigations report of condition 3(a) above shall be attached to the consent notices of conditions 3(d), 3(f), and 3(i) below.*
 - c) *That a plan for Lot 1 shall be prepared showing the building platform for this lot in accordance with the application plan and the geotechnical reports submitted with this and previous subdivision and development applications for this land. The plan shall show:*
 - *The platform dimensions;*
 - *Distances to boundaries;*
 - *The areas of known land instability as depicted on the revised plan prepared by Dr Jon K Lindqvist as Figure 1 of the geotechnical report: Geotechnical Assessment of Lot 3, part 82 Riccarton Road East, Dunedin, dated 18 May 2016;*
 - *The features of the plan shall be clearly labelled.*

The plan shall be attached to the consent notice of condition 3(d) below.

- d) *That a consent notice shall be prepared for registration on the title of Lot 1 for the following on-going conditions:*

'There shall be only one residential unit constructed on this site in order to maintain the density of development in accordance with the resource consent decision of LUC-2016-169.'

'The dwelling for this site shall be confined to the building platform as shown on the attached plan, unless further geotechnical investigation shows a building site elsewhere to be suitable and acceptable to Council. The siting, design, colours and landscaping of any dwelling shall be undertaken in accordance with the conditions of resource consent LUC-2016-169.'

'The portion of the landscape feature situated within this site shall be maintained in vegetation as specified by the attached Geolink Land Investigations report for on-going land stability reasons. It is the landowner's responsibility to ensure that this planting is maintained in perpetuity, and to replant within a 12 month period if the slope is cleared.'

'All buildings on this site shall be clad and/or painted in a uniform non-reflective recessive colour being a muted tone of green, grey, brown, tussock or similar subdued colour, to blend in with the colours of the surrounding landscape.'

'Any effluent disposal system on this site shall be specifically designed and installed by a suitably qualified person in order to minimise the risk of de-stabilising the land or adversely affecting neighbouring properties in any way.'

- e) *That a plan for Lot 2 shall be prepared showing the building platform for this lot in accordance with the application plan and the geotechnical reports submitted with this and previous subdivision and development applications for this land. The plan shall show:*

- The platform dimensions;*
- Distances to boundaries (a minimum yard space of 20.0m shall be maintained in respect of the southwest boundary);*
- The areas of known land instability as depicted on the revised plan prepared by Dr Jon K Lindqvist as Figure 1 of the geotechnical report: Geotechnical Assessment of Lot 3, part 82 Riccarton Road East, Dunedin, dated 18 May 2016;*
- The features of the plan shall be clearly labelled.*
- A minimum 10m set back line in relation to any existing scarps or depressions on the steep slopes to the north or south.*
- The features of the plan shall be clearly labelled.*

The plan shall be attached to the consent notice of condition 3(f) below.

- f) *That a consent notice shall be prepared for registration on the title of Lot 2 for the following on-going conditions:*

'There shall be only one residential unit constructed on this site in order to maintain the density of development in accordance with the resource consent decision of LUC-2016-169.'

'The dwelling for this site shall be confined to the building platform as shown on the attached plan, unless further geotechnical investigation shows a building site elsewhere to be suitable and acceptable to Council. The siting, design, colours and landscaping of any dwelling shall be undertaken in accordance with the conditions of resource consent LUC-2016-169.'

'All buildings on this site shall be clad and/or painted in a uniform non-reflective recessive colour being a muted tone of green, grey, brown, tussock or similar subdued colour, to blend in with the colours of the surrounding landscape.'

'All buildings shall maintain a minimum setback distance of 10.0m from any existing scarps or depressions on the north or south-facing slopes of this lot, as shown on the attached plan.'

'The portion of the landscape feature situated within this site shall be maintained in vegetation as specified by the attached Geolink Land Investigations report for on-going land stability reasons. It is the landowner's responsibility to ensure that this planting is maintained in perpetuity, and to replant within a 12 month period if the slope is cleared.'

'Any effluent disposal system on this site shall be specifically designed and installed by a suitably qualified person in order to minimise the risk of de-stabilising the land or adversely affecting neighbouring properties in any way.'

g) *The geotechnical report prepared by Dr Jon K. Lindqvist shall be attached to the consent notice of condition 3(i) below.*

h) *That a plan for Lot 3 shall be prepared showing the building platform for this lot in accordance with the application plan and the geotechnical reports submitted with this and previous subdivision and development applications for this land. The plan shall show:*

- The platform dimensions;*
- Distances to boundaries (a minimum yard space of 20.0m shall be maintained in respect of the southwest boundary);*
- The areas of known land instability as depicted on the revised plan prepared by Dr Jon K Lindqvist as Figure 1 of the geotechnical report: Geotechnical Assessment of Lot 3, part 82 Riccarton Road East, Dunedin, dated 18 May 2016;*
- The features of the plan shall be clearly labelled.*
- A minimum 10m set back line in relation to any existing scarps or depressions on the steep slopes to the north or south.*
- The features of the plan shall be clearly labelled.*

The plan shall be attached to the consent notice of condition 3(g) below.

i) *That a consent notice shall be prepared for registration on the title of Lot 2 for the following on-going conditions:*

'There shall be only one residential unit constructed on this site in order to maintain the density of development in accordance with the resource consent decision of LUC-2016-169.'

'The dwelling for this site shall be confined to the building platform as shown on the attached plan, unless further geotechnical investigation shows a building site elsewhere to be suitable and acceptable to Council. The siting, design, colours and landscaping of any dwelling shall be undertaken in accordance with the conditions of resource consent LUC-2016-169.'

'All buildings on this site shall be clad and/or painted in a uniform non-reflective recessive colour being a muted tone of green, grey, brown, tussock or similar subdued colour, to blend in with the colours of the surrounding landscape.'

'The foundation design and placement of the house on this site shall be in accordance with the findings and recommendations of Dr Jon K. Lindqvist, as found in the attached geotechnical report.'

'The portion of the landscape feature situated within this site shall be maintained in vegetation as specified by the attached Geolink Land Investigations report for on-going land stability reasons. It is the landowner's responsibility to ensure that this planting is maintained in perpetuity, and to replant within a 12 month period if the slope is cleared.'

'Any effluent disposal system on this site shall be specifically designed and installed by a suitably qualified person in order to minimise the risk of de-stabilising the land or adversely affecting neighbouring properties in any way.'

- j) That the consent notice 6451339.15 shall be cancelled from the title of the subject site.

Land Use LUC-2016-169

1. The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 28 DP 341800,' dated 18 April 2016, and the accompanying information submitted as part of LUC-2016-169 received by Council on 28 April 2016 (and revised on 11 May 2016), except where modified by the following:
2. That only one residential unit shall be established on each lot.
3. That the dwelling for each site shall be fully contained within the approved building platform as shown on the consent notice plan attached to the respective property's title unless further geotechnical investigation shows a building site elsewhere to be suitable and acceptable to Council. The dwelling and any accessory buildings can be built within yard spaces where these are situated within the approved building platform.
4. If a dwelling is to be constructed outside of the building platform, all yards shall be maintained in accordance with the rules of the operative District Plan at the time unless further resource consent is obtained for a yard breach.
5. The dwelling shall be clad and/or painted in a uniform non-reflective recessive colour being a muted tone of green, grey, brown, tussock or similar subdued colour, to blend in with the colours of the surrounding landscape.
6. Prior to lodging an application for building consent for each new dwelling, plans and elevations of the house and any residential accessory buildings, shall be submitted to the Resource Consents Manager for approval. The plans shall detail:
 - a) The location of the proposed dwelling in relation to the boundaries and the approved building platform;
 - b) The dimensions of the proposed dwelling;
 - c) The nature and colour of the materials being used to clad and roof the dwelling;
 - d) The location and extent of any earthworks to be carried out;
 - e) A landscape development plan that will be implemented to mitigate the effects of the dwelling on the surrounding landscape.
7. The landscape development plan of condition 5 above shall show, as a minimum:

- a) *The location of the planting on-site in relation to the proposed dwelling;*
 - b) *The density of planting and the species to be used, the number of each species to be planted, and the age/grade/height of the plants at the time of planting.*
 - c) *The measures that will be utilised to ensure the successful long-term establishment of the plantings.*
8. *The planting identified in the landscape development plan of condition 6 above shall be completed within 12 months of the date of occupation of each respective dwelling.*
 9. *That if the existing building (former barn/temporary residence as approved by LUC-2005-369384/A) on Lot 1 SUB-2016-28 is to be used as a residential dwelling (temporary or otherwise) after the deposit of the survey plan for SUB-2016-28 (i.e. once the new site is created), then the property owner shall submit to Council a landscape development plan in accordance with condition 6 above for approval within three months of the deposit of the survey plan. The planting shall be undertaken in accordance with the landscape development plan within 12 months of the date of deposit of the survey plan for SUB-2016-28.*
 10. *That if the existing building (former barn/temporary residence as approved by LUC-2005-369384/A) on Lot 1 SUB-2016-28 is to be used as a residential dwelling (temporary or otherwise) after the deposit of the survey plan for SUB-2016-28 (i.e. once the new site is created), then the property owner shall submit to Council details of the permanent colour and cladding of the building for approval within three months of the deposit of the survey plan. The colour and cladding of the building is expected to comply with condition 4 above, unless the Council approves otherwise. If the building is to be reclad or painted in accordance with the approved details, this work shall be undertaken within 12 months of the deposit of the survey plan.*
 11. *Access to the new lots shall have a minimum width of 4.0m and a vertical clearance of not less than 4.0m high to ensure that the New Zealand Fire Service appliances have sufficient vehicular access to the property.*
 12. *The new dwellings shall each have an adequate fire fighting water supply available at all times in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk to the property. This can be stored in underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1.0m above ground level) which can be accessed by an opening in the top of the tank so that couplings are not required.*
 13. *A hardstand area shall be formed beside the tanks of condition 11 above so that a fire service appliance can park on it, if so required.*