

TO: Hearings Committee

FROM: Darryl Sycamore, Planner

DATE: 23 February 2017

SUBJECT: **SUBDIVISION CONSENT SUB-2016-107**
LAND USE CONSENT LUC-2016-539
49 WALTON STREET
DUNEDIN

1.0 INTRODUCTION

- [1] This report has been prepared on the basis of information available on 17 February 2017. 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.

2.0 DESCRIPTION OF PROPOSAL

- [2] Resource consent is sought to subdivide and develop the site at 49 Walton Street, Dunedin. The site is legally described as Lot 16 Deposited Plan 130, held in Computer Freehold Register OT7D/1274 and comprises 455m².
- [3] The property is zoned Residential 1 in the Dunedin City District Plan (the Plan). It has a rectangular form, with 14.14m of frontage against both Walton Street and Font Street. Access to the site is via Font Street, a cul-de-sac serving a handful of properties. A 90m² bungalow built in what is thought to be 1915 has deteriorated such that restoration is now considered uneconomic and will be demolished to make way for the new development.
- [4] The proposal seeks to create two new Lots. Each will feature a residential unit with a floor area of approximately 65m².

Lot 1

- [5] New Lot 1 will have frontage to Walton Street but rely on a Right of Way (RoW) for access through new Lot 2 given the topographical constraints associated with Walton Street. New Lot 1 will comprise 254m² where a new two bedroom 2-storied dwelling will be erected centrally within the site.
- [6] Carparking will be by way of an internal garage built into the dwelling. With respect to maneuvering, the site will be able to accommodate vehicles entering and exiting the property in a forwards direction.

Lot 2

- [7] New Lot 2 will have frontage to Font Street and comprise 206m², or 158m² net when accounting for the RoW serving new Lot 2. Again, a two bedroom 2-storied dwelling will be located centrally on the site. The proposed Right of Way will provide access, servicing and drainage in favour of new Lot 2.

- [8] The proposed legal and formed width of the RoW will be 3.3m, with a 0.7m separation distance between the RoW and dwelling on new Lot 2.
- [9] A number of District Plan breaches will require authorisation as part of the overall development.



FIGURE 1- SITE LOCATION RELATIVE TO WALTON & FONT STREETS

3. ACTIVITY STATUS

- [10] As noted above, the subject site is located in the Residential 1 Zone in the Dunedin City District Plan. The surrounding sites are also zoned Residential 1 which is described in the Plan as being:

"This area covers a large proportion of the suburban residential zone. Sites are reasonably uniform in shape and size and the typical development is a single or two storey house surrounded by lawns and gardens. This zone includes the majority of Dunedin's middle and outer suburbs and many of the settlements that lie within the City, which are in effect 'town in country'.

One of the most significant and important characteristics of this zone is the dominance of single dwelling developments. This, in combination with the low density of development, allows significant open areas which have been landscaped and used for on-site recreation. Large trees are common in this zone and these contribute to the amenity. There are still areas of relatively undeveloped land which provides an excellent green belt. This land is usually reserve or land which is difficult or uneconomic to develop.

There has been some multi-unit development in this zone, including special housing such as elderly persons and retirement units. In recent years there has been pressure for infill development. The increase in density and scale of development is sufficiently spread not to have significantly altered the underlying character of this

residential zone. The cumulative effect of these developments will change the residential character.

Apart from community support activities, few non-residential activities are located within this zone. This absence of non-residential activity helps to retain the residential character which is an important and integral part of the zone's amenity. This area comprises of three distinct housing characteristics reflective of the time they were constructed being: the pre-war period (prior to 1930s); the post-war period (between 1940s and 1970s); and within the last 20 years. The average size of dwellings erected within the last 20 years has increased compared to most of those erected during the pre and post-war periods, and this is most evident in areas such as Waverley and the newer parts of Mosgiel. As a result of this and the reduction in the size of sites, site coverage has also increased to about 30%.

Generally, housing developments in this zone have large front and rear yards which are used for gardens and on-site recreation. On-site private recreation complements the access the community has to public areas such as parks, beaches, reserves and the Town Belt. This access is seen as a priority in order to maintain the health and wellbeing of the community. As a result of the low site coverage and extensive open space, there is significant space between buildings. This space between buildings contributes to the privacy for each development as well as providing for sunlight penetration and mitigates the adverse effects of shading. On-site car parking is generally available due to the relatively recent development of these areas, particularly for those developments in the last 20 years, and the requirements of previous plans to provide such a facility. The provision of on-site parking has added significantly to the character and amenity of the residential zone both in terms of residents' ability to have direct access to their property and the enhancement of the visual street amenity of open and uncluttered accessways.

Housing development in the Residential 1 Zone is characterised by:

- *Front yards generally more than 4.5 m deep which are landscaped with trees and/or gardens.*
- *Side yards of 1.8 m or more giving a reasonable space between buildings.*
- *Single-storeyed, single-unit developments.*
- *Rear yards capable of accommodating large trees.*
- *Low site coverage (25%).*
- *A variety of dwelling sizes.*

These features help maintain the character of the zone contribute to the high amenity values in the zone".

- [11] *The definition of residential activity with the Plan means "...the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papakaika housing if these are in the form of residential units".*
- [12] *The definition of a residential unit means "... a building or part of a building which is self contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents..." . As such, the proposal falls within the definition of residential activity.*

Subdivision

Subdivision is a restricted discretionary activity in the Residential zones where the proposal complies with Rules 18.5.3 to 18.5.6, 18.6.9 to 18.5.12 and each resulting site complies with minimum area and frontage requirements. In this case, both Lots are of insufficient size to meet the minimum area requirements, and therefore in accordance with Rule 18.5.2, the proposed subdivision is a **non-complying** activity.

Land Use

- [13] The proposed residential activity is a permitted activity subject to compliance with the performance criteria of Rule 8.7.2.
- [14] Residential activity can be established on an existing site of any size. In this instance, neither of the proposed Lots are established, and therefore residential activity on a site of this size is not permitted. Both Lots in the proposed development fail to meet the density requirements of rule 8.7.1(i) which provides for one residential unit per 500m². Therefore, in accordance with Rule 8.7.6(iii) the proposal is a **non-complying** activity.
- [15] I note for non-complying activities the performance standards provide only a guideline in terms of the rule breaches.
- [16] In terms of new Lot 1, the proposal will also fail to comply with the following provisions:
- Rule 8.7.2(i)(a) requires a front yard setback of 4.5m. In this case, and owing to the site constraints, the proposed dwelling will be sited 2.4m from the boundary with Walton Street.
 - Rule 8.7.2(ii) stipulates all bulk shall be contained within a 63° height plane angle. In this case, the proposed dwelling will have minor height plane breaches.
- [17] New Lot 2 will breach the following:
- Rule 8.7.2(i)(a) requires a 2.0m setback from all boundaries except the front yard. In this case, a breach will occur where the dwelling on new Lot 2 will be 1.0m from the internal boundary.
 - Rule 8.7.2(ii) stipulates all bulk shall be contained within a 63° height plane angle. In this case, the proposed dwelling will have minor height plane breaches.
 - Rule 8.7.2(v) states every residential unit shall provide at ground level an area of 35m² of amenity open space that is capable of containing a 4.5m diameter circle. In this case, while the amenity open space can be met, it falls short of being able to contain the 4.5m circle.
 - Rule 20.5.7(v)(b) states a 3.5m wide legal width of a Right of Way is required. In this case the RoW width will be 3.3m.
 - Rule 20.5.7(iv)(f) states the separation distance between a residential unit and a RoW access shall be a minimum of 1.0m. In this case, the separation distance is 0.7m.

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

- [18] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as **General Residential 1**. The maps also indicate that the property is within the **Infrastructural Constraint** overlay.
- [19] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider.

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

- [20] 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.

- [21] A HAIL report (2015-51) was obtained by the applicant as part of a search of Council records. It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

5.0 NOTIFICATION AND SUBMISSIONS

- [22] A number of written approvals were included in the application. In accordance with section 104(3)(a)(ii) of the Resource Management Act, the Council cannot have regard to the effects of the activity on these parties.

Person	Owner	Occupier	Address	Obtained
Robert Chapman	✓		47 Walton Street	28.10.16
Stewart Bates		✓	47 Walton Street	27.10.16
Evan Morris	✓	✓	51 Walton Street	01.11.16
Chris George	✓		5 Font Street	29.10.16
Bridget Watson & Matthew Chisnall		✓	5 Font Street	30.10.16

- [23] The application was publicly notified in the Otago Daily Times on 28 November 2016. Submissions closed on 16 January 2017.
- [24] Four submissions were received by the close of the submission period. One submission opposed the application with the remaining three neutral. Those submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2. I note a submission from the DCC City Property Department was incorrectly lodged and subsequently withdrawn.
- [25] It is appropriate to refer the Committee to two affected parties who provided their written approval and subsequently provided a submission to the notification. In this case, the written approvals are superseded by their submissions and their written approval has been discounted.

Name of Submitters	Support/ Oppose	Summary of Submission	Wish to be heard?
Loas & Warren Palmer	Neutral	- The submitter resides opposite the subject site. The submitter states their access is via Font Street. - The submitters are concerned about access to their property and increase vehicle movements. Requests: - That access to their property is not impeded as they have mobility and health concerns	No
Robert Chapman	Neutral	Mr Chapman provided no information to his submission.	No
Heritage NZ	Neutral	- States the site may be an archaeological site. - They note an archaeological assessment is promoted in the application which is supported by the submitter. Requests: - That an advice note relating to heritage considerations are	Yes

		incorporated into the consent decision should consent be approved.	
Lisa Scanlon & Evan Morris	Oppose	- The submitters are concerned with effects on their sunlight and views. - They state parking is already challenging and this proposal may exacerbate parking pressure. - Is concerned about the area being developed further beyond density provisions. - The submitters appreciate the character of the area comprising bungalows. Requests: - That consideration is given to height of any units, density, the character of the area and effects on sunshine availability.	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

Assessment is made of the following effects of the proposal:

- Permitted Baseline
- Sustainability;
- Lot size and Dimension
- Easements
- Bulk and Location & Appearance of Buildings;
- Amenity & Character
- Transportation;
- Provision of Stormwater, Water and Wastewater
- Hazards;
- Positive Effects;
- Construction Effects
- Cumulative Effect;
- Other Matters

Permitted Baseline

- [27] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.
- [28] In this case, the permitted baseline allows for a residential unit on an existing Lot of any size provided the performance standards are met i.e bulk and location. As the site

is Residential 1 and contains 455m², the baseline provides for a single residential unit. To further subdivide the site and establish a second residential unit, the property overall would be required to have an area of 1,000m². In this case, the proposal has a site area shortfall of 545m².

- [29] Within the context of the current application, I consider there is a limited baseline that will serve to narrow the matters relevant to the Committee's consideration of the application. The site provides no scope for further residential activity. One residential unit already exists on the property. A further residential activity will further aggravate the degree of non-compliance in terms of site area and the character of the Residential 1 zone.

Sustainability

- [30] 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. One means by which the Plan seeks to achieve the sustainability of these matters is through the density provisions of the District Plan.
- [31] The subject site is 455m² in area. Under the relevant District Plan provisions, at least 1,000m² is required for the construction of two units. Accordingly, the overall density for the development will equate to one dwelling per 227m², which presents a significant deviation beyond that anticipated in the District Plan.
- [32] A greater level of density has the potential to adversely affect the sustainability of the City's infrastructure, and the amenity values and character of the surrounding area. The Council's Water & Wastewater Department has raised concerns about infrastructural capacity. While an individual subdivision application is not problematic, cumulative incremental development could compromise the efficiency of the Council's horizontal infrastructure. Both matters are discussed in greater detail below in the sections on Infrastructure, and Amenity Values and Character.
- [33] Further, a subdivision for two units on site, (where numerous properties nearby share similar characteristics) could potentially create an undesirable precedent with respect to activities in the Residential 1 zone. Should this application be approved, it may catalyse a series of further applications for developments in similar circumstances.
- [34] It is my opinion for the reasons given below, that the proposed development will not be a sustainable development of the City's natural and physical resources.

Lot Size and Dimensions (18.6.1(q))

- [35] The proposed subdivision will create two new lots from a parent title comprising 455m². Neither lot is large enough for residential dwellings to be built on each under the Residential 1 zone density provisions which sets density at not less than 500m² per residential unit. The proposal seeks to set aside the intent of the Plan and establish residential activity at a density more compact than that of the Residential 2 framework.
- [36] A Council GIS modeller prepared a basic comparison was made to quantify the number of sites within the wider area that comply with the zoning provisions and those which do not. Figure 2 below indicates the area included in that analysis, where the black rectangle demarcates the subject site. Only the properties in red shading were included to avoid the influence of retirement homes, schools and the suchlike.
- [37] 297 properties were captured with the area of consideration. Of those properties, 359 separate units were identified (as listed in the Mass Appraisal dataset sourced from QV ratings data). This represented:
- a density (units/site) over the whole area as 1.2;
 - an average property size of 593.2m²;
 - a median property size of 523.9m²;

- a minimum property size of 241.9m²; and a
- a maximum property size of 2300.6m².

The average size was calculated as:

- For one residential unit, the average size of the property overall was 577m²; and
- For two residential units, the average size of the property overall was 666m².

[38] It is apparent the proposal to subdivide a 455m² site and establish two residential units is directly at odds with the cadastral layout within this area.

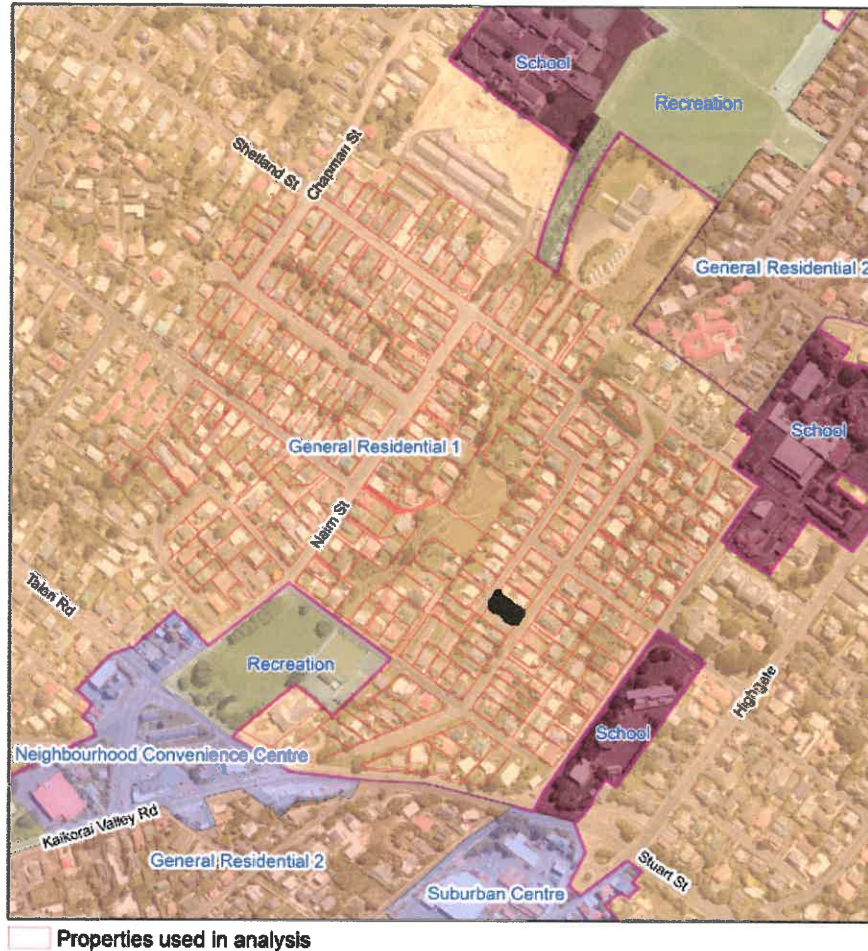


FIGURE 2- AREA USED IN DENSITY ANALYSIS WITH SUBJECT SITE IN BLACK

- [39] A density assessment included in the application also examined the distribution of units in terms of Lot size. Taking a cursory look at the sites shown in red in the applicant's density assessment, being those less than 250m² per unit I note:
- 55 Walton St, elderly rental flats, DCC owned, Authorised in 1975
 - 61 Walton St, privately owned, authorised in 1984
 - 69 Walton St, privately owned, now operating as a single unit.
 - 77 Walton St, privately owned, constructed in 1920
 - 48 School St, comprises elderly rental, owned by the DCC. Authorised in 1967.
 - 5 Tyne St, 2-unit title, privately owned, constructed in 1922.
- [40] In my opinion, none of these sites provides any support for the proposal. In effect, the applicant is seeking to redraw the boundaries of medium density residential activity relying on the status of other properties lawfully established prior to the inception of the District Plan.
- [41] When assessing my density analysis and the density assessment provided by the application it is apparent the proposal does not align with the character of the Residential 1 zone.

Easements (18.6.1(i))

- [42] New easements will be created as part of the proposed subdivision of the area marked 'A' in the scheme plan attached to the application. The new easement will have a legal width of 3.3m and cater for access, water and utility rights and foul sewage and stormwater drainage rights over new Lot 2 in favour of new Lot 1.

Bulk and Location and Design and Appearance of Buildings

- [43] Both dwellings will feature a number of bulk and location breaches. Both dwellings will be 2-storied in a local setting where there are few dwellings of similar design. They will both be aligned to maximise available sunlight.
- [44] The proposed dwelling on new Lot 2 will be set back only 0.7m from the Right of Way. In terms of effects, the design of the dwelling will be such that no windows or doors will open into the RoW area.
- [45] As a result the dwellings may appear out of place in terms of the form and the density. That said, while atypical in character, both dwellings will be new, warm and sunny in comparison to the tired bungalow currently on the site. I can certainly appreciate the desire to remove the existing dwelling and start afresh both in terms of improving the housing stock and the economics of a project.
- [46] One submitter raised concern in terms of the yard breaches and especially the bulk that bisects the height plane angle. In their view, the proposed dwellings will be out of character and will result in a loss of amenity and sunlight. I agree, the two proposed dwellings will alter the character of the immediate area and will potentially affect sunlight, although the latter is unquantified.
- [47] Overall, the two proposed dwellings will fit within the setting. In terms of the bulk and location breaches, they do not appear to challenge the provisions of the plan nor the quality of amenity to adjoining neighbours greatly. After all, when assuming the baseline, the applicant could establish a single unit that could potentially present a similar profile near the boundary with any of the submitters.

Amenity Values and Character

- [48] 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".

- [49] The Residential 1 zone is known for its open settlement pattern and occupies the greater portion of the residential areas within the City. Typically, development is a single or two storey house surrounded by lawns and gardens. This zone includes the majority of Dunedin's middle and outer suburbs and many of the settlements that lie within the City.
- [50] The proposal is to develop the subject sites at a greater density than that permitted by the District Plan. The Residential 1 zone specifies a minimum site area of 500m², but does permit the development of a residential unit on an existing site of any size provided the relevant provisions (i.e bulk and location) for the zone are met.
- [51] The proposal features a two unit double-story development, which breaches the bulk and location provisions with an area where 2-storied developments are generally sparse compared to other Residential 1 areas. The new development may allow residents to over-look neighbouring properties resulting in a loss of privacy.
- [52] The application was discussed with the Council's Urban Designer, Mr Peter Christos. He raised concerns regarding the cumulative effects of over-dense development and the erosion of the traditional urban settlement pattern. He noted the District Plan seeks to control settlement patterns and the subdivision proposal is contradictory to the anticipated Residential 1 zoning patterns.

- [53] Generally speaking, it is my opinion that the proposed development will likely have an adverse effect on the amenity values and character of the area which creates a number of positive effects. In my opinion the proposal represents an over development of the site.

Transportation

- [54] The application was forwarded to Council's Transport Department for comment. Council's Transport Planner, Mr Grant Fisher provided his technical expertise which is included in Appendix 3.
- [55] Mr Fisher noted vehicle access to Lots 1 and 2 will be via Font Street. New Lot 1 will have right of way over Lot 2, though it is noted that Lot 1 will also have legal frontage to Walton Street. Lot 2 will have legal frontage to Font Street only.
- [56] Mr Fisher acknowledged the application was conscious of the non-compliances regarding the proposed access arrangements for both sites. Specifically, the proposed Right of Way will have a legal width of 3.3m, and the separation between the proposed access and dwelling on Lot 2 will be 0.7m. Compliant standards include a 3.5m legal width and 1.0m separation between dwellings and access ways. Transport however considers these non-compliances to have no less than minor effect on the safety/functionality of the vehicle access. I note a fire hydrant is sufficiently close to meet the fire fighting requirements.
- [57] Transport accepts the proposed access arrangements will be sufficient, subject to the vehicle accesses meeting the formation standards of the District Plan. That is, the vehicle access to Lot 2 shall be a minimum 3.0m formed width, hard surfaced from the edge of the carriageway of Font Street to a distance not less than 5.0m inside the property boundary, and be adequately drained for its duration. As the vehicle access to Lot 1 is via a right of way, its full length shall be a minimum 3.0m formed width, adequately drained, and hard surfaced for its duration.
- [58] Furthermore, Mr Fisher advised that the vehicle crossing, between the road carriageway and the property boundary, is within legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from the DCC Transport Group).
- [59] In terms of parking, each dwelling will be provided a single on-site parking space. It is noted that this would comply with District Plan requirements for parking associated with permitted residential activities. Transport therefore considers the proposed parking arrangements to be acceptable.
- [60] On-site manoeuvring is required for the proposed dwelling on Lot 1 as it is a rear site. The plans provided with the application shows that a manoeuvring area has been provided for this dwelling. On-site manoeuvring is not required for the proposed dwelling on Lot 2.
- [61] Overall, Transport anticipates the effect of traffic generated by the proposed development to have negligible impact on the safety/functionality of the surrounding transport network and sought the inclusion of a number of consent conditions should consent be granted.
- [62] I have read and concur with the transport assessment by Mr Fisher subject to a number of consent conditions.

Provision for Stormwater, Water and Sewerage

- [63] The application was provided to the Council's Water & Wastewater Consents Officer, Chelsea McGaw for her technical input. She noted the proposal is to demolish the current dwelling and construct two two-bedroom double storied dwellings, each on their own lots.

- [64] According to the concept plans, the Consents Officer noted it appears that the sites will be close to 100% impervious; however a total site coverage figure has not been provided. From a density perspective, the Consents Officer noted Residential 1 rules in the Plan allows for a minimum lot size of 500m² per residential unit for subdivision.

Existing Services

- [65] A review of the Council's GIS records shows 100mm diameter water pipes and 150mm diameter wastewaters pipe in both Walton Street and Font Street. There is a 150mm diameter stormwater pipe downstream of the property which runs across Font Street, through 43 Walton Street (Lot 20 DP 130) and ending in a manhole on Walton Street.

Modeling report

- [66] The Council's Hydraulic Modeler carried out an assessment of the application in terms of available capacity in the system. Modeling confirmed there are no specific issues in supplying water to the site subdivision despite the density being significantly exceeded.
- [67] In terms of waste-water capacity, the wastewater catchment networks were assessed to ensure development does not exacerbate known issues. The Hydraulic Modeler noted surcharging of the network, constructed overflow spills and flooding downstream is predicted and observed during rainfall events in this area. Capital renewals are ongoing within the Kaikorai Valley area starting at this upstream end and it is anticipated this work will alleviate these events by 2031.
- [68] An additional second property could create additional flows which have the potential to increase flooding and overflow spills. Low-flow devices will help alleviate further loading, but will not act as a stand-alone solution.
- [69] With respect to stormwater management, there is a DCC stormwater pipe from Walton Street through properties to Font Street and onto Kaikorai Valley Stream. The W&WWBU Consents Officer noted the Council does not hold any modeling information on this stormwater catchment. Any increase in impervious surface could have potential flooding issues downstream. Stormwater flows from this site have the potential to be significantly different post development to the current single dwelling site. Any additional development that is beyond the allowable has the potential to exacerbate known stormwater surcharge and flooding issues in the catchment downstream. Should the Committee approve the application, appropriate consent conditions in terms of managing the degree of impermeability should be applied; this may include the need for retention storage.
- [70] The W&WWBU Consents Officer stressed that any new developments that breaches density rules directly counters Water and Waste Services' usual forward-planning for capacity. Water and Waste Services use the District Plan zoning as guidance for future planning of the network. Over-dense subdivision proposals consume capacity that has been already been assigned and planned for in the zone at the permitted density. At some point capacity will be fully utilised rather than during peak periods currently and areas in the zone at or below the permitted density may not be able to be supplied without additional or upgraded infrastructure.
- [71] Overall, the W&WWBU do not support the proposal as modeling confirms the stormwater and wastewater network has no capacity for additional developments that fall below the density provisions. W&WWBU recommends the application be declined, however should consent be granted, they provided a series of consent conditions for inclusion in the decision certificate. These are included in the report in Appendix 3.
- [72] I have read and concur with the report provided by the W&WWBU Consents Officer.

Hazards

- [73] The application was forwarded to the Council's Consulting Engineer, Mr Lee Paterson for his expert input in terms of natural hazards.

- [74] Mr Paterson noted from a hazards perspective the application raises few concerns in term of risk from natural hazard. The site is recorded on the GNS Assessment of Liquefaction hazards in Dunedin City, dated May 2014, as within Domain A. The ground is predominantly underlain by rock or firm sediments. There is little or no likelihood of damaging liquefaction occurring. This is a non-risk in terms of the proposed development. The site is relatively steep at the Walton street frontage, but not overly so.
- [75] Mr Paterson recommended a number of consent conditions relating to the construction effects should the consent be granted. These are attached to his memo in Appendix 3.

Positive Effects

- [76] The proposal seeks to establish two town-houses that are low maintenance which will provide an improved living environment to the residents. They will be new, warm and capture more sun. The development will help improve the housing stock in the area and potentially provide for the elderly although two-storied developments are less than ideal for older folk. The project may serve as a signal to motivate other landowners to follow, and be a catalyst for additional rejuvenation of the area.
- [77] I have little doubt the positive effects promoted in the application are both valid and genuine. The Committee is invited to apply a consideration of positive effects in forming their overall judgement.

Construction Effects

- [78] Should consent be granted there is likely to be a period of disruption to neighbours. Works are permitted under the Property Law Act 2007, as so the question is not 'if' the works should occur but 'how' to undertake the works with minimal disruption to other parties.
- [79] Any construction works will be temporary in nature. People generally recognise this fact and are often prepared to submit to adverse effects over a construction period whereas otherwise the effects would be considered unacceptable. Effects include noise, dust generation, and vibration. These can be largely managed through appropriate methods (for example, dampening down of dust), and limiting the works to general working hours during the week when less likely to disturb people.
- [80] Overall, should consent be granted, I am confident construction effects can be sufficiently addressed by conditions of consent. Such conditions will manage noise, vibration, dust and hours of operation.

Cumulative Effects (8.13.13)

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

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

- [82] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [83] In this case, the zoning of the land is Residential 1 which provides for a density of development of one residential unit per 500m² of site area. The proposed subdivision, creating two lots on a 455m² site does not meet the density provisions of the District Plan.

- [84] Overall, I consider the effect of subdivision and permitting a further residential unit on the subject site overall will result in adverse cumulative effects within either the site or the wider area.

Other matters

- [85] Should the Committee be of mind to grant the application, a development contribution will be sought by the Council. Any such contribution can be calculated as and when any decision is released.

OBJECTIVES AND POLICIES ASSESSMENT

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

- [86] 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.

Sustainability

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin	The applicant seeks to demolish an existing dwelling on the site that is rundown and to some degree negatively affects to the amenity of the immediate area. Once the existing dwelling is removed, the applicant seeks to subdivide and establish two dwellings on the 455m² Residential 1 zoned site. The existing site featuring a single dwelling is currently at a density greater than that permitted in the Plan. The proposed development will be at a density even greater than that permitted by way of the Plan. The proposed 2GP does not seek to promote further development in this area which is discussed in more detail below. While it is reasonable to assume the new dwellings will contribute positively to the amenity relative to the existing dilapidated dwelling, it will also result in a significant deviation from that expected under the Plan. Such deviation is likely to adversely affect the amenity of the immediate environment, and could give rise to further unanticipated adverse effects as a result of the cumulative effects that may occur. Objective 4.2.1 and Policy 4.3.1 seek to maintain and enhance the amenity values within Dunedin. The planning framework and zoning promotes a minimum Lot size of only 500m². The application for two dwellings on a 455m² has a 545m² shortfall, which represents a significant deviation from the provisions. While no issues were raised in terms of pressure on the transport network, the Council's Water & Wastewater Modeller confirm existing infrastructure is over-capacity and oppose any further over-dense development. The proposal is inconsistent with the sustainability provisions, although the development can be viewed in both a positive and negative estimation.
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.	
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Objective 4.2.5	Provide a comprehensive planning framework to manage the effects of use and development of resources.	
Policy 4.3.7	Use zoning to provide for uses and developments which are compatible within identified areas.	
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.	

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

Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is considered to be contrary with these objectives and policies. The proposed dwellings are out of scale with most of the existing residential development as shown in the density analysis.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.2	Encourage the maintenance of the residential amenity in neighbourhoods and areas by managing the coordination of the subdivision of land.	Further, while the size of the site prior to subdivision is typical for the Font Street/Walton Street area, it is well below the average area for Residential 1 sites. Subdivision will directly contradict and undermine the zone rules where each dwelling would be contained within half the site. This proposal will likely adversely affect the amenity, where little could be improved by way of mitigation. Therefore, it is my opinion the likely adverse effects resulting from the proposal should be avoided.
Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	The proposal is considered to be consistent with this objective in terms of transportation matters as sufficient on-site manoeuvring space to allow vehicles to access the sites satisfactorily will be provided. The development is however contrary in relation to the horizontal infrastructure. The Water & Wastewater modeller states the current network is over-allocated.

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The proposed subdivision is not considered to be sustainable development. The existing site featuring one residential unit comprises 455m ² . To further subdivide the Residential 1 site into two Lots is directly at odds with sustainable management of the resource. The proposal is therefore contrary 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	The proposal has been assessed by Council's Consulting Engineer. He has no concerns about the proposal. In terms of the NES, the site is suitable for further development. The proposal is considered to be consistent with this policy.

	managed in a sustainable manner.	
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	As noted above, the Council's Water & Wastewater Modeller has carried out an assessment of the network capacity. He concluded the network serving the subject site is overallocated and therefore could not support over-dense subdivisions. The proposal is therefore contrary 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 proposed subdivision is considered to take into account the physical attributes of the area. That is, the application will be considered with a clear understanding of the infrastructure constraints. It is considered 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 proposed subdivision is being assessed with a full recognition of the potential uses of water and land. The proposal is considered to be consistent with this objective.
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	The subdivision consent application is being heard with the associated land use application for residential activity and technical breaches including those of the access.
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 proposal is considered to be inconsistent with this objective. The proposed subdivision is for residential sites in a residential zone, although as a density not contemplated in the Plan. The development of residential land is considered to have adverse effects on the City's natural and physical resources being the local amenity, three waters network and the threat the proposal presents to precedent challenge.
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.	This is a process policy. The application is considered to adequately deal with the potential issues that can arise with subdivision and development of land.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The proposed development will require connection to the three-waters network which is over capacity. While some mechanisms such as low-flow devices etc could address the one off issue, the precedent risks posed by the application will in my view encourage a number of other parties to subdivide their property and rely on this application. The W&WWBU Modeller has stated they do not support the proposal as the network is already over-allocated, the risk extends beyond a single new residential unit. During high-flow events wastewater has, and continues to spill directly into the Kaikorai Stream. Council has a capital project in place which will be completed in 2031. Until the capital works are complete the proposal is in my view, contrary to this objective and policy.
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	

Transportation

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
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.	The proposal is considered to be generally consistent with these objectives and policies. The Council's Transport Planner has expressed the view that while the site is challenging, the development will be generally acceptable.
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.	
Policy 20.3.5	Ensure safe standards for vehicle access.	

Environmental Issues

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 21.2.2	Ensure that noise associated with the development of resources and the carrying out of activities does not affected public health and amenity values	The proposal is consistent with this objective and policy. The proposal is for a residential development in a residential area. With the possible exception of the construction period, the proposed development is not expected to cause noise nuisance. Care will be needed with the placement of heat pumps, should they be installed.
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and amenity.	

- [87] Looking at the relevant objectives and policies individually, and considering these overall, the above assessment suggests that the application is **contrary** with the key provisions.

Proposed 2GP Objectives & Policy Analysis

- [88] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan, with respect to those rules made operative under s86D at the time of notification. The relevant rules made operative under s86D relate to minimum site size for rural zones and the assessment of subdivision performance standard contraventions for the rural zone. These are assessed below.

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and 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.	The proposed subdivision and development of the new lots is not expected to adversely impact on the transport network. That said, the new sites will be constrained by size and parking/ manoeuvring may be challenging. Overall the Transport Planner supports the proposal. The proposal is therefore considered to be consistent with these objectives and these policies. When taking a forward-looking outlook, the matters of precedent are not at all compelling. Should this application be approved, the Committee should be mindful of the implications of further similar developments on the road network which includes some physical constraints.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	
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.	
Objective 6.2.4	Parking areas, loading areas and vehicle accesses are designed and located to:	

	a) provide for the safe and efficient operation of both the parking or loading area and the transport network; b) facilitate the safe and efficient functioning of the transport network and connectivity for all travel methods.	
Policy 6.2.4.2	Require all driveways to be designed to ensure: a) the surfacing and gradient of the driveway allows it to be used safely and efficiently; b) that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. c) the width of the driveway is sufficient to allow the type and number of vehicles likely to be using it to do so safely and efficiently; and d) sufficient distance is provided between shared driveways and dwellings.	
Policy 6.2.4.6	Require sufficient visibility to be available at vehicle crossings to minimise the likelihood of unsafe vehicle manoeuvres.	The subject site has sufficient visibility and therefore the proposal is considered to be consistent with this policy.

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.	As noted previously, The Water and Wastewater Business Unit have identified a concern in terms of network capacity. They do not support this development. In terms of the precedent argument presented in the application, the Committee could potentially anticipate further demand as a result of approving this application. The proposal is considered to be contrary with these objective and policies.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: a) in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and b) in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	
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.	The proposed new lots will have adequately water supply available for fire fighting, therefore meeting the residents' health and safety requirements. The proposal is considered to be consistent with this objective and these policies.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	

Residential Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 15.2.1	Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facilities, and commercial activities that support the day-to-day needs of residents.	The proposed subdivision is for residential development in a residential zone. The residential development of the subject site is appropriate in terms of the zoning and the surrounding area. There is no expectation the land be developed with anything other than residential activity. The proposal is considered to be consistent with this objective and policy.
Policy 15.2.1.1	Provide for a range of residential and community activities, where the effects of these activities can be managed in line with objectives 15.2.2, 15.2.3, 15.2.4, and 15.2.5 and their policies.	
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents.	The proposed subdivision will create two new residential lots. While outdoor amenity space will be limited, the application details new, warm dwellings which will be welcome in the area given the aging housing stock. The proposal is consistent with this objective and policy.
Policy 15.2.2.1	Require residential development to achieve a high quality of on-site amenity by: a) providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, and recreation; b) having adequate separation distances between residential buildings; c) retaining adequate open space uncluttered by buildings; and d) having adequate space available for service areas.	
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	A number of submitters have raised concern at the effects of the proposal on their own quality of life. I agree that in some regards the proposed new dwellings on undersized Lots will have a negative effect. On the contrary, the removal of an older cold dwelling in favour of two new warm houses does present a number of positives. Overall, it is my opinion the proposal is inconsistent with this objective.
Objective 15.2.4	Subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	The site is 455m ² and the minimum lot size for the Residential 1 zone is 500m ² per residential unit. The 2GP does not seek to provide for increased density and the proposal seeks to subdivide the property and establish two residential units. The proposed subdivision of the subject site is not considered to maintain the character of the residential area. The proposal represents a significant digression from the Residential 1 density provisions. Further, as the precedent matters are not compelling the proposal could be the catalyst for further over-dense development. The proposal is considered to be contrary with this objective and these policies.
Policy 15.2.4.2	Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	
Policy 15.2.4.6	Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a) maintain the amenity of the streetscape b) reflect the current or future intended character of the neighbourhood; c) provide for development to occur without unreasonable earthworks or engineering requirements; and d) provide for quality housing.	
Objective 15.2.5	Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: a) visual amenity and character; b) the stability of land, buildings, and structures; and c) surrounding properties	The proposal does not include any application for earthworks although earthworks are likely to be necessary to a minor degree. The proposal is considered to be consistent with this objective and policy.

Policy 15.2.5.1	Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by: a) being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b) using a batter gradient that will be stable over time.	
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- [89] As the Proposed 2GP is not far through the submission and decision-making process, the objectives and policies of the operative Dunedin City District Plan have been given more weight than those of the Proposed 2GP. That said, the overall assessment of both the operative and proposal Plans are generally aligned. Specifically, residential layout and density is managed by zoning to ensure a degree of amenity, character and functionality. The proposal is at odds with these underlying principles.
- [90] The proposal is considered consistent or generally consistent with the relevant objectives and policies for Manawhenua, Transportation and Environmental sections of the Plan. Objectives and policies relating to noise, light and glare, and the transportation assessment are effects based and conclude the proposal is generally achievable by way of tailored conditions of consent.
- [91] Crucially with respect to the assessment of the key Sustainability, Subdivision and Residential objectives and policies, I consider the proposal to be contrary with the Plan.
- [92] Having regard at the relevant objectives and policies individually for both the Operative District Plan and the relevant provisions of the 2GP, and considering these in an overall way, the above assessment indicates that the application is **contrary** to those provisions. Furthermore, when taking into account the risk of establishing an undesirable precedent the application creates even greater threat to the Plan.

Assessment of Regional Policy Statement and Plans

- [93] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. At the time of writing this report, the decisions are within the appeal period.
- [94] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, and 9: Built Environment. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:
- Objective 1.1: Resource Management in Otago;
 - Objective 4.3: Infrastructure is managed and developed in a sustainable way;
 - Policy 4.3.1: Managing infrastructure activities;
 - Objective 4.5: Urban growth and development is well designed;
 - Policy 4.5.1: Managing for urban growth and development;
 - Policy 4.5.2: Planned and coordinated urban growth and development;
 - Policy 4.5.7: Integrating infrastructure with land use;

7. DECISION MAKING FRAMEWORK

- [94] Before traversing the Part II matters, it is appropriate to note the High Court's recent decision and the implications of *R J Davidson Family Trust v Marlborough District Council*. The consequence of this case requires decision makers to apply Part II where plans and higher level plans are uncertain. In this case, the outcome of the 2GP and

the Proposed Regional Policy Statement are uncertain and therefore Part II shall be applied.

Part II

- [95] 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";
 - 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".
- [96] With regard to Section 5(2)(a), it is considered that the proposed subdivision not will maintain the physical resource of the residential land by subdividing the subject site as it exceeds the expectations of the District Plan for the Residential 1 zone.
- [97] With regard to Section 5(2)(c), it is considered that the adverse effects of the proposed subdivision and two new residential units will create new adverse effects on the immediate receiving environment.
- [98] With regard to Section 7(b), it is considered that the proposed subdivision and residential activity is not an acceptable use and development of the land resource.
- [99] With regard to Section 7(c), it is considered that the proposed subdivision of will adversely affect the amenity values of the Residential 1 zone. Any adverse effects from increased dust and noise resulting from traffic on the access can be mitigated through upgrading of the access.
- [100] With regard to Section 7(f), it is considered that the proposed subdivision and subsequent residential activity will adversely affect the quality of the environment.
- [101] With regard to Section 7(g), it is considered that the Residential 1 zoned land resource is of finite character. The subdivision proposal will adversely alter the natural and physical land resource as the new lots will be significantly less than minimum lot size for the Residential 1 zone.

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

- [102] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the provisions of the National Environmental Standard were taken into account when assessing the application. The proposal is considered to be consistent with the policy objective of the National Environmental Standard as a review of the site history indicates no previous activities which feature on the HAIL list.

Section 104

- [103] 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 of this report assessed the environmental effects of the proposal and concluded that the effects on the environment will be contrary in terms of effects on the Residential 1 zone amenity.

- [104] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6 concluded that overall the application is contrary with key objectives and policies relating to the subdivision and over-dense rural development.
- [105] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement, regional plan or National Environmental Standard. The applications are consistent with the relevant objectives and policies of the Regional Policy Statement for Otago and PRPS. The application is also consistent with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
- [106] 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. Approving further development on an already undersized residential lot has the potential to undermine the integrity of the District Plan. A more thorough examination is considered below.
- [107] Overall, it is my opinion the proposal does not satisfy either requirement of s104(1)(a) or (b).

True exception (s104(1)(c))

- [108] 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, a key matter relevant to the Committee. The application to establish a residential activity on the undersized residential lot is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.
- [109] 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."
- [110] 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."
- [111] Similar matters have been considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC* (C92/2003) has demonstrated that when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council will apply the 'true exception test'.
- [112] 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."

- [113] More recently however, 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."

- [114] The Committee should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current application in this regard. If the Committee deems there to be a real threat from this proposal should it be approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can, or should be avoided. The risk to plan integrity falls not only on the operative Plan, but also the Proposed 2GP, and therefore the Hearings Committee must be confident the site and proposal is indeed unique.
- [115] In my view there are numerous sites of similar size and with dual frontage in the immediate area, where the landowners could rely on this consent decision to support other applications. Other landowners could foreseeably promote an undersized two lot subdivision with residential activity on both new Lots based on a positive outcome with this application.
- [116] The application promotes the concept of demolishing the existing old dwelling and creating two modern 2-bedroom units, each on their own title. These units will be warm and dry and designed to accommodate for the aging population. In my opinion, this may be true however any subdivision could rely on a similar argument which hardly constitutes a true exception.
- [117] The application also states the site is already undersized, and that there are numerous density breaches in the immediate area. I accept that many of the existing residential sites are already below the minimum 500m² lot size. The density analysis in Section 5 of this report clearly indicates the proposal is clearly at odds with the layout, density and land-use of the local area. It is appropriate to note the cadastral layout of the area is historic, defined well before the inception of the District Plan, or its predecessor the Town & Country Planning Act 1977. To open the gate to further subdivision defies the intent of the Plan even further and potentially encumber application of the 2GP.
- [118] The applicant's agent provides (in page 16 of the application) a detailed summary of an earlier resource consent decision LUC-2016-110 at 38 Richmond Street, South Dunedin, in support of this application. By way of background, this application sought to establish two residential units on a Residential 2 site comprising 438m². The Plan provides residential activity at one unit per 300m². That consent was granted for two townhouses.
- [119] The applicants promote this consent decision as a precedent to support the proposal before the Hearings Committee today. LUC-2016-110 referred to a consent LUC-2009-469 at 36 Richmond Street as a precedent to rationalise this application. Ironically, the AEE for LUC-2009-469 states 'a negative would be perhaps opening a Pandora's Box with regard to other application on a site of this size'. I agree, but am mindful every application has their own unique characteristics and every application must be judged on their own merits.
- [120] Turning to the application at 38 Richmond Street, it is my opinion there are few elements that directly relevant to the current application. Key points of difference between the two sites and applications include:

- The 38 Richmond Street application was for a land use only and did not include subdivision;
- 38 Richmond Street is zoned Res 2 which anticipates a greater density than Res 1;
- Each unit for the 38 Richmond Street development would have (if the proposal survives the current Environment Court appeal in its current form) a 80m² or (27%) shortfall in terms of site area, whereas this proposal would have a 294m² (59%) and 246m²(49%) shortfall respectively if approved.
- Unlike this application, the 38 Richmond Street development also complied with all the performance standards except density.
- The proposed 2GP would (at this point of time) support the development of Richmond Street making the proposed density permitted.

[121] The application in the s104 assessment states the integrity of the District Plan is for the same reasons (as the 38 Richmond Street proposal) not imperilled by granting the application before the Committee today. I do not agree, and hold the view if this consent is approved, the Committee should anticipate a number of further applications for similar developments.

[122] It is my opinion, the proposal features few elements that define it as a true exception, and the proposal has little that differentiates it from the surrounding Residential 1 properties with dual frontage. In my opinion, the proposal overall does not satisfy the true exception test under section 104(1)(c) of the Act.

Section 104D

[123] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.

[124] As discussed above in the assessment of effects, it is considered that the proposal fails to meet several key provisions relevant for developments in the Residential 1 zone. Of most significance is the degree to which the proposal will result in an over-dense site, in effect creating the justification and vehicle for a raft of similar developments to occur based on precedent.

[125] Overall I consider that the actual and potential effects associated with the proposed development are more than minor, and not necessarily able to be mitigated by way of consent conditions and, therefore, the first 'gateway' test of section 104D is not met.

[125] The second gateway test refers to whether the application is contrary to the relevant objectives and policies of a plan or proposed Plan. It is my position that the application is contrary with the key objectives and policies with respect to the Sustainability, Residential and Subdivision sections of the District Plan.

[126] It is therefore my opinion the application fails to meet either 'gateway' test outlined by section 104D.

8 RECOMMENDATION

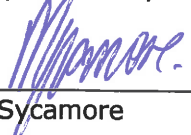
Having regard to the above assessment, I recommend that the application be declined.

9 REASONS FOR RECOMMENDATION

[127] It is my opinion that any actual or potential adverse effects on the environment of allowing the activity will be more than minor for the following reasons:

- a) The site and cadastral layout of the subject site is typical of that found within the Walton Street/ Font Street area. The site is zoned Residential 1 in the Dunedin City District Plan and comprises 455m². The application states New Lot 1 will be 254m² and new Lot 2 will comprise 206m².
- b) Analysis indicates a density of residential activity greater than that anticipated by the District Plan is not particularly common with an average of 1.2 units per site, with the average site area of 593m² for one unit and 666m² for two residential units.
- c) A neighbouring submitter expressed concern at the loss of character and amenity, including the loss of sunlight by the addition of two 2-storied units.
- d) The Council's Water and Wastewater Hydraulic Modeller has assessed the capacity of the wastewater and stormwater network. He confirms the current infrastructure is over-allocated and there is little capacity for further development. At peak-periods the wastewater network cannot accommodate demand which result in overflows. The Water & Wastewater Business Unit does not support over-dense applications in the catchment.
- e) The addition of low-flow devices to this proposal offers little to address the long term demand on the network should other landowners within the catchment seek resource consent in reliance on this application.
- f) Crucially, it is my opinion the true exception argument is not compelling. Should consent be granted it may lead to a plethora of similar applications in the immediate and potentially wider area. To illustrate, the applicant relies on a land use consent in South Dunedin (which is still under appeal) to promote this application. Thus, any future application from any number of neighbours with similar site constraints relying on the outcome of this consent will be challenging to contain.
- g) In my opinion integrity in terms of the Operative and potentially the Proposed District Plans will be imperilled to the point that this application should be declined.
- h) The proposal is does not satisfy either limb of the section 104D test for non-complying activities.
- i) The proposal is generally inconsistent with the matters outlined in Part II of the Act.

Report prepared by:

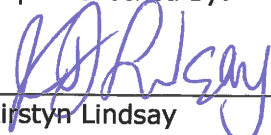

Darryl Sycamore

Planner

Date

23-02-17

Report checked by:


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Date

23/02/17