

27 September 2017

CC Otago Limited
C/- Allan Cubitt
11 Bedford Street
Dunedin 9012

Dear Sir

RESOURCE CONSENT APPLICATIONS – LUC 2017-222, LUC 2017-223 and SUB 2017-43 – 91 and 99 FORMBY STREET, OUTRAM

The above applications seek consent for two separate developments on contiguous land on the south-west edge of Outram.

91 Formby Street, comprising 1.6389 ha, is zoned a mix of Residential 5 and Rural in the District Plan and Rural Taieri Plains and Township and Settlement in the proposed Plan. Land Use LUC 2017-222 seeks approval to erect a dwelling on that portion of the land zoned Rural.

99 Formby Street, comprising 3.6422 ha has a similar split zoning. Subdivision SUB 2017-43 seeks to create a series of sections fronting Formby Road, with the greater part of each lot zoned Residential 5 in the operative Plan and Township and Settlement in the proposed Plan, and a small portion zoned Rural. The subdivision application as lodged sought approval for 8 lots fronting Formby Street. A separate lot completely zoned rural is also sought, and land use LUC 2017-223 seeks approval to erect a dwelling on that lot.

The applications were processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprising Commissioner Keith Hovell (Chairperson), Commissioner Andrew Noone and Councillor Jim O'Malley, heard and considered the application at a hearing on 6 September 2017.

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

The Committee has **granted** consent to application LUC 2017-222, **granted in part** consent to SUB 2017-43 and **granted in part** consent to LUC 2017-43. The full text of this decision commences below with a consent certificate attached to this letter.

It should be noted that following the issue of new titles for the land subject of subdivision SUB-2017-33, the street address and legal description of the site described above as 99 Formby Street has changed. As a result, the sites subject of the application are now 91 and 107 Formby Street, with the latter property now being Lot 2 Deposited Plan 512917 (Computer Freehold Register 797550). All subsequent references in this decision will be to these new property details.

The Hearing and Appearances

The applicant, Craig Horne, was in attendance and was represented by Allan Cubitt.

Council staff attending were Campbell Thomson (Advisor to Committee), Lianne Darby (Processing Planner), and Wendy Collard (Governance Support Officer).

Submitters in attendance were Patricia Scott, Donna Peacock, Andrew Barratt on behalf of Our Food Network Dunedin and Murray Harris on behalf of Dunedin Rural Development.

Procedural Issues

No procedural issues were raised at the commencement of the hearing.

Principal Issues of Contention

The principal issues of contention are as follows:

- Whether the various proposals represented a sustainable use of land comprising high class soils.
- Whether the circumstances of this proposal represent a "true exception", and as a consequence whether any approval of the application impacted on the integrity of both the operative and proposed district plans, and public confidence in those documents.

Summary of Evidence

Introduction from Processing Planner

Mrs Darby outlined details of the application, noting the subdivision is a non-complying activity under both the operative and proposed Plans as the minimum site size of 15.0 ha and 40.0 ha respectively is not being met for the land zoned for rural purposes. While a small area of rural land was included within each of the smaller lots fronting Formby Street she considered this acceptable, as it would enable a series of near equally sized and regularly shaped allotments to be created. Mrs Darby was of the view that the existing and proposed zone boundary between the areas allowing residential use and rural activities did not follow any identifiable or logical feature, and placed little weight on its precise location.

Mrs Darby noted that in response to her Section 42A Report, the applicant prior to the hearing had submitted two revised plans of subdivision, both removing one lot from the Formby Street frontage, but retaining a dwelling on the rural land (proposed Lot 9), albeit in a more northerly position, closer to the site boundary.

Mrs Darby advised the Committee that the various reports from Council departments had raised no opposition to the consents sought.

In considering the effects of the consents sought Mrs Darby considered the proposed development of 91 Formby Street will impact negatively on the rural productivity potential of the land but a house is anticipated on this site and it is largely a discussion about where the house should be located.

With regard to the subdivision and residential development of 107 (formerly 99) Formby Street she considered the effects are no more than minor, except for the creation and development of Lot 9 which will have more than minor adverse effects on rural productivity and high class soils.

Mrs Darby was also of the view that the proposal is consistent with many of the objectives and policies of the operative Plan but inconsistent with those relating to rural amenity and the mixing of land uses. She considers the creation and development of Lot 9 is contrary to those objectives and policies relating to rural production, sustainability, and the protection of high class soils. She also considered it to be contrary to the direction given for the subdivision of rural land and the preservation of rural land use in the Proposed Plan.

Overall, she considered that the development of 91 Formby Street, and the creation and development of the original Lots 1 to 8, will meet both tests of section 104D of the Act. However, she did not consider that Lot 9 meets either test of section 104D, and should not be approved. Nor did she consider there is anything exceptional about Lot 9 which will allow the granting of consent without the risk of setting an undesirable precedent.

Mrs Darby therefore recommended that the land use consent seeking approval to erect a dwelling on land zoned Rural at 91 Formby Street be approved, given that a dwelling was anticipated by the Residential 5 zoning on land near to Formby Street. She also recommended that subdivision and residential use of the land within 107 Formby Street also be allowed, as again this was anticipated by both the operative and proposed District Plans. However, Mrs Darby opposed the creation of the 2.6 ha allotment on land zoned for rural use and the erection of a dwelling on that allotment, primarily because of the presence of high class soils.

In reply to questions from the Committee, Mrs Darby advised that her recommended condition 3(c) on the subdivision consent limiting the height of vegetation along Huntly Road to two metres, was based on a request from a submitter, and she had included it as a discussion point. Mrs Darby also advised the Committee that should it be of a mind, it is able to impose a condition prohibiting the further subdivision of proposed Lot 9.

The Applicant's Case

Mr Cubitt spoke to his written evidence that was circulated to the parties prior to the hearing. He noted that that subject sites have previously been utilised for market garden purposes in conjunction with other land, but this use is no longer feasible. He considered the residential zoning along Formby Street as a clear indication by the Council that this area is appropriate for future development. As a consequence, this land should be subdivided, with the residual rural land of 107 Formby Street being held as a single lot facilitating its continued use for rural purposes.

Mr Cubitt advised that following consideration of the Planner's report, the applicant wished to modify the application with regard to 107 Formby Street, to remove one of the proposed residential lots. In effect, the intent was to increase the size of the residential lots, and at the northern end provide two options, with either Lot 7 being larger, or an addition made to adjoining land at the north (Lot 1 DP 512917). Mr Cubitt considered both options within the scope of the application as lodged. At the hearing, Mr Cubitt presented a further option, (A2) to enable the boundary of the site to the north to be extended at the rear to provide consistency with the other residential lots proposed. In addition, it was proposed to shift the proposed building platform north, closer to 91 Formby Street and promote a condition that no high class soils be removed from the site. Mr Cubitt considered the only person affected by this change is the applicant himself.

Mr Cubitt accepted the proposal is a non-complying activity and that no permitted baseline applies because of the mixing of the zones. He also accepted the recommendation to approve the land use consent in relation to 91 Formby Street and the conditions recommended.

Mr Cubitt stated that the amended proposal now promoted a density of development on 107 Formby Street anticipated by the operative and proposed district plans. He asserted however, that it was appropriate to provide for the erection of a dwelling on the proposed rural allotment as it would not be acceptable to a future owner to locate a dwelling near Formby Street. Rather, a site away from other houses is likely to be preferred. He considered the effect of this on loss of high class soils and visual amenity to be no different than constructing a rural accessory building, which is permitted by the district plan rules. Mr Cubitt also considered the impact can be minimised by requiring all buildings on the site to be located within the proposed building platform which comprises about 5% of the site area. He proffered that such an outcome was consistent with the character of the surrounding area.

It was the view of Mr Cubitt that the key point in contention was the future use of Lot 9 being the 2.6 hectare rural allotment proposed. It was his view that the Council is unlikely to decline any application to subdivide the residential land fronting Formby Street, and the issue becomes one of what should be permitted on the residual rural Lot 9. In his view, a particular use cannot be forced on any landowner, and as a consequence, market gardening, or any other activity utilising the high class soils, cannot be guaranteed. While Mr Cubitt expressed sympathy to submitters concerned with the loss of high class soils, and while accepting that regard must be had to that in considering land use, it was his contention that proposed Lot 9 must be recognised as an independent resource that can be sold separately. Having regard to the definition of "environment" in the RMA, Mr Cubitt stated:

How the physical resource (in this case land) is held (in an independent title) is an economic condition that affects the resource and the people that own it. Therefore, it follows in my view, that it is not just the land that must be sustainably managed, but the land in the form it is legally held that must be sustainably managed."

It was the view of Mr Cubitt that given the baseline of permitted farm buildings on proposed Lot 9, the outcome now sought would likely generate more positive effects with regard to landscape values than what could occur as of right on the site. This, together with the changes proposed to relocate the building platform, would reduce impacts on high class soils and rural productivity to the extent of the effects being no more than minor.

Mr Cubitt also disagreed with the approach of Mrs Darby, stating the proposal cannot be broken into parts. Having regard to the overall proposal for 107 Formby Street he considered the adverse effects no more than minor having regard to what is anticipated by the Residential 5 zoning, the nature of the receiving environment and the characteristic of the subject title, and the baseline for the rural zone.

Adopting an holistic assessment of the objectives and policies it is of the view of Mr Cubitt that the proposal for 107 Formby Street is not contrary to these, although he gave no assessment of specific provisions.

With regard to the precedent and plan integrity matters Mr Cubitt referred to various case law. It was his overall view however that the split zoning, an existing site already below the minimum size permitted within the Rural zone, and a rural/urban boundary that is already blurred, creates circumstances that create a "true exception" and would not create an undesirable precedent.

In reply to questions from the Committee, Mr Horne advised that the land is currently used for baleage, and the income from that pays for rates and little more. He also indicated that he has owned the land subject to the applications since June 2017. When asked which of the various options submitted was preferred, Mr Cubitt advised it was that submitted at the hearing, labelled Option A2. Finally, Mr Cubitt advised that he did not see a need for any height restriction on vegetation on proposed Lot 9, given a road separated the site from nearby houses.

Evidence of Submitters

Andrew Barratt spoke to the submission lodged under the name of Our Food Network Dunedin, together with **Murray Harris** who had lodged the submission of Dunedin Rural Development.

Mr Barratt noted that only 3.6% of the soils in the City area were high class and much of these were located in the floodplain, and only two or three large areas of these soils were left available for productive use. He explained that high class soils take over 10,000 years to form and every effort should be made to protect them. Mr Harris added his support to the matters raised by Mr Barratt and presented a plan showing the location of high class soils on the Taieri.

In reply to questions from the Committee Mr Barratt stated that the Council's district plans disregard that a house built on a rural/residential lot changes to a house with a plot of land around it, and that is different to a building supporting a rural activity. He added that he considers it false to argue that people buy a life-style block so that they are separated from neighbours, and that as a matter of principle development should be excluded from all high quality soils. Mr Barratt also stated that he opposed a compromise of including some Residential 5 land in proposed Lot 9 and requiring buildings to be erected on that land.

Patricia Scott presented a written submission, expressing concern that there were a number of proposals on the Taieri to either build on small lots or rezone them for residential use, without an overview of the cumulative effect. In her view, insufficient regard was being given to infrastructure issues, particularly in the Outram area.

Of most concern to Mrs Scott was the protection of high class soils, and she supported the view of Dunedin Rural Development and she wanted market gardening to be restored on the Taieri. She commented that the increase in the price of the land once a house was built on it made it impossible for market gardeners to operate. Mrs Scott also had concerns with the precedent this proposal created and feels that high class soils should be protected for future generations and for the production of food.

Processing Planner's Review of Recommendation

Mrs Darby was asked by the Committee if she wished to review her recommendation in light of the evidence presented at the hearing. She advised that she maintained her original recommendations, and the submission of the additional plan at the hearing did not alter her view. She also indicated that she considered there to be little adverse effect in adopting the rear boundary for the residential sections proposed, rather than the zone boundary.

Applicants Right of Reply

Mr Cubitt reiterated the positive aspects of the application and he felt that this is the best outcome for the property. He asked for consent to be granted. He also commented that the depiction of where 99 Formby St was drawn on the submitted by Mr Harris was not accurate

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 5 Manawhenua, 6 Rural/Rural Residential Zones, 8 Residential, 17 Hazards, 18 Subdivision, and 20 Transportation. Consideration has also been given to the objectives and policies in the following chapters of the Proposed District Plan: 2 Strategic Directions, 6 Transportation, 9 Public Health and Safety, 11 Natural Hazards, 15 Residential Zones, and 16 Rural Zones.

Statutory provisions considered included Sections 5, 6(f), 7(b), 7(c), 7(f) and 7(g) within Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

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

Decision

The final consideration of the application, which took into account the application, the submissions lodged, and all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee had inspected the site on 4th September 2017 prior to the date of the hearing. The Committee reached the following decisions after considering the application under the statutory framework of the Resource Management Act 1991:

Subdivision SUB-2017-43

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan and Proposed Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants in part** consent to the **non-complying** activity being the subdivision of the land subject to the NES legally described as Lot 2 Deposited Plan 512917 (CFR 797550) at 107 Formby Street, Outram, into a total of eight lots as shown on the plan notated "Option A2" presented at the hearing held on 6 September 2017.*

Land Use LUC-2017-222

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants** consent to a **non-complying** activity for the establishment of residential activity on the land legally described as Lot 2 DP 7816 (CFR OT370/243) at 91 Formby Street, Outram.*

Land Use LUC-2017-223

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants in part** consent to a **non-complying** activity for the establishment of residential activity on six of the lots numbered 1 to 7, and in addition either to one of those lots or Lot 9 as shown on the plan notated "Option A2" presented at the hearing held on 6 September 2017 for the land subject of SUB-2017-43 at 107 Formby Street, Outram.*

Reasons for this Decision

The Committee noted that there was no dispute that the proposed subdivision and associated land use consents were all a non-complying activity, and that it was necessary for the proposal to pass the "gateway test" of section 104D of the Resource Management Act 1991. This required that either the environmental effects of the proposal were no more than minor, or the proposal was not contrary to the objectives and policies of the operative and proposed District Plans when assessed as a whole.

There was also no dispute between the expert planners, being Mr Cubitt for the applicant and Mrs Darby who was the author of the section 42A Report, that the consents applying to 91 Formby Street and 107 Formby Street could be considered separately. The Committee agrees with this approach. Accordingly, in its deliberations it considered SUB 2017-43 together with LUC 2017-223 as they apply to 107 Formby Street, and it considered LU 2017-222 as it applies to 91 Formby Street separately. In the Committee's view, the use of land within each of the properties was not related to the other, and the subdivision of 99 Formby Street is not linked in any way to 91 Formby Street.

91 Formby Street

Mrs Darby advised the Committee that 91 Formby Street contains some 1.63 ha of land, of which more than 1,000 square metres is zoned Residential 5, and as of right a dwelling could be erected as of right on that Residential 5 land. Arising from that Mrs Darby was of the view the issue was not whether a dwelling was allowed, but where it should be located. It is the applicant's preference to locate the dwelling away from Formby Street, on land that is zoned rural. It is this aspect of the proposal that generates the need for a consent, because the overall site area is below by some margin the minimum of 15 ha in the operative Plan required to enable residential use on a rural lot. There is no relevant rule in effect with regard to the use of land in the proposed Plan.

In the Committee's view, the presence of a complying area of Residential 5 land is part of the permitted baseline and relevant to its considerations. In addition, the Committee noted that the owners of 85, 87 and 93 Formby Street had given their written approval to the consents sought and the Committee cannot take into account any adverse effects upon those persons.

Having regard to the effects of constructing a dwelling on 91 Formby Street we were also advised that reticulated water supply will be available and that the site area was sufficient to enable effluent disposal without creating any issues. Mrs Darby also noted that the soils present on the Residential 5 land were the same high class soils as on the rural land. This was confirmed by Mr Harris. Mrs Darby therefore considered there be no difference in effects between what was sought by the applicant and what could occur as of right, and she concluded that the extent of adverse effects of allowing consent LUC-2017-222 was minor, passing the effects limb of the gateway test under Section 104D.

Mrs Darby considers the construction of a dwelling on the land zoned rural of 91 Formby Street inconsistent and contrary to various objectives and policies of both the operative and proposed District Plans, particularly those provisions that seek to retain areas of high class soils and rural land for productive use. However, overall she concluded that the proposal was not contrary to the objectives and policies of the operative or proposed District Plan.

Mrs Darby considered that the proposal for 91 Formby Street passed the threshold test, and the Committee had discretion to grant consent. She recommended accordingly, subject to the imposition of conditions. The applicant agreed with the recommendation in this regard and did not present any additional evidence on the matter.

The Committee generally accepts the advice and logic of Mrs Darby. Having regard to the conditions imposed on the consent granted, it agrees that with regard to 91 Formby Street the extent of any adverse effects is no more than minor, but that the proposal is contrary to the objectives and policies of both the operative and proposed District Plans for the reasons set out in the Section 42A Report.

The Committee accepts the concerns raised by a number of submitters with regard to the loss of high class soils and the approach in the objectives and policies that these should be retained for productive purposes and to provide for the needs of future generations. The Committee particularly noted that the extent of land zoned as Residential 5 on 91 Formby Street is approximately 1,000 square metres, yet the building platform sought on the rural land has an area of 1,200 square metres. Effectively, this results in a net loss of land for productive purposes, and when the need to provide yards for buildings in the residential zones is taken into account, then that loss is even greater. On the basis of the Committee's site visit, it also concluded that for rural amenity reasons, and particularly the protection of views from Formby Street, the southern limit of the "Proposed Building Platform" should be moved to the north by ten metres. Mr Cubitt, in answer to questions from the Committee opposed any shifting of the building platform because the written approvals gained were accepting of the building platform in its current position.

Taking these matters into account, the conditions of consent limit the size of the building platform to 40 by 20 metres by removing ten metres from its southern end. All buildings, including those associated with any agricultural activities on the land are to be located within the building platform. The Committee considered any such agricultural use is likely to be limited given the small size of the site. It is only with these conditions that the Committee can be satisfied that the extent of adverse effects arising from the proposal do not exceed the effects arising by undertaking activities permitted by the operative District Plan.

107 (formerly 99) Formby Street

The application as lodged included a plan of subdivision showing 8 residential lots fronting Formby Street and one rural lot of 2.6 ha with frontage to Huntly Road and an entrance access to Formby Street. This rural lot (proposed Lot 9) is common to all options pursued by the applicant, although its area changed to a limited degree.

Prior to the hearing, attached to the evidence of Mr Cubitt, two additional plans were submitted, endorsed "Option A" and "Option B". Option A provided for 7 residential lots, with a smaller Lot 8 intended to be amalgamated with Lot 1 DP 512917 to the north. Option B showed proposed Lots 7 and 8 as a single lot. At the hearing, a further plan was submitted, endorsed as "Option A2", with proposed Lot 8 still to be amalgamated with Lot 1 DP 512917, but with additional land included at the rear of Lot 1.

The Committee expressed concern as to which of the various options consent was being sought. Mr Cubitt advised that regard should be given solely to Option A2. It was his view that this proposal did not give rise to any effects beyond those considered in the original consent, and as such Option A2 fell within the bounds of the original consent and could be considered by the Committee. The Committee agreed with Mr Cubitt in this regard, and confined its deliberations solely to the subdivision proposed by Option A2.

As noted above, both the subdivision SUB-2017-43, and the associated land use consent LUC-2017-223 seeking approval to establish residential activities on the various lots, are a non-complying activity, and therefore subject to the threshold test of section 104D of the RMA.

Excluding proposed Lot 9, Mrs Darby considered the effects of the proposal as no more than minor. In relation to proposed Lot 9, she was of the view that the creation and development of that lot will have more than minor adverse effects on rural productivity and high class soils. Her approach was primarily derived taking into account the Residential 5 zoning of the land fronting Formby Street. Reports from other Council departments indicated that the land fronting Formby Street was able to be served by reticulated water supply and was suitable for septic tank treatment and disposal of effluent on the size of sections proposed. Mrs Darby considered that the key effect to have regard to related to high class soils.

The submitters in opposition, including those at the hearing, opposed the applications because of the loss of high class soils and the desirability of retaining them for use by future generations, with most seeking declining of all consents on that basis. Mrs Scott however, was only opposed to the residential use of proposed Lot 9, and sought consideration of the Council owning land of high class soils and leasing it for productive use. Dunedin Rural Development also sought reconsideration of the zoning of the Residential 5 land. While the leasing and zoning of land are not matters to which the Committee can have regard to in considering these consents, the other concerns of the submitters are relevant in assessing the effects and regard has been given to them.

Mr Cubitt, on behalf of the applicant, argued that the level of residential development proposed was commensurate with that anticipated by the operative and proposed District Plans, and as a consequence the extent of any adverse effects was no more than minor.

The Committee accepts that high class soils are a natural and physical resource under the provisions of the RMA, and as such the Council is required to provide for their sustainable management. The Committee is of the view however that this would have been given appropriate consideration when the zoning of the land was being considered. We were advised by Mrs Darby that no submissions had been lodged specifically opposing the residential zoning of the land fronting Formby Street, and notwithstanding that this zoning is not yet operative in the proposed Plan, as a consequence, a residential zoning will continue into the foreseeable future. The Committee also noted that the rules of the operative District Plan only require these soils to be retained on the site.

Having regard to the above matters, the Committee has concluded that the Residential 5 zoning provides an expectation that subdivision and residential use will be permitted on that land. As a consequence, it agrees with the conclusion of Mrs Darby that the extent of any adverse environmental effects of the proposed subdivision and development of the Residential 5 land will be no more than minor. It also agrees that the creation and development of proposed Lot 9 will give rise to adverse effects that are more than minor. In that regard, the Committee has taken into account that a small allotment of 3.6 hectares previously used for productive purposes is being made smaller, at 2.6 hectares, and on the basis that the current owner has only recently purchased the land, there was clearly no meaningful attempt to utilise the land productively. Rather, it appears to the Committee that the sole purpose of acquiring the land was to enable subdivision to be undertaken.

With regard to the objectives and policies, the Committee also accepts the advice of Mrs Darby that the creation and development of Lot 9 is contrary to the objectives and policies in the operative Plan relating to rural production, sustainability, and the protection of high class soils, and also contrary to the direction given for the subdivision of rural land and the preservation of rural land use in the Proposed Plan. She did consider however that the creation and development of the lots fronting Formby Street were not contrary to the objectives and policies of either the operative or proposed Plans.

While Mr Cubitt disagreed with Mrs Darby, he provided no expert evidence to the contrary. The only expert advice the Committee received on this matter was from Mrs Darby.

While Mrs Darby considered that proposed Lot 9 failed to meet the threshold test, she was still of the view that the Committee had a discretion to grant consent to the consents, albeit subject to various conditions, particularly in relation to the restriction of any residential activity locating on proposed Lot 9. The Committee considered this a pragmatic approach and adopted it.

In considering the wider section 104 matters, the relevant matters again related to the presence of the high class soils and rural amenity. For the reasons set out above, the Committee concluded that the subdivision of the Residential 5 land was appropriate, and that the key issue in contention related to what should happen to the residual land, namely proposed Lot 9. In that regard, the Committee placed significant weight on the provisions of the operative Plan that sought to protect high class soils on land zoned for rural purposes, and the more general provisions of the proposed Plan, such as Objective 2.2.2 and Policy 2.2.2.1, that sought to protect high class soils throughout the district. The Committee totally opposes the establishment of a residential activity on a standalone Lot 9, particularly given that a substandard allotment in terms of the provisions of the rural zone is being made smaller by the inclusion of some rural land into the lots fronting Formby Street. The Committee considers to the extent practical the totality of rural land subject to this consent should remain available for productive rural use. The Committee also has serious concerns at the precedence created by such an outcome.

In the circumstances, the Committee has concluded that it is fair and reasonable in resource management terms to require Lot 9 to be amalgamated with one or more of the lots fronting Formby Street, together with a clause prohibiting further subdivision. That then creates a situation similar to 91 Formby Street that would allow one dwelling on the combined lot. More importantly however, the inclusion of some Residential 5 land together with proposed Lot 9 offsets the inclusion of land zoned for rural purposes in the lots fronting Formby Street. In reaching this decision, the Committee has noted the opposition of the applicant and Mr Barratt to this approach, but on balance this regime is considered by the Committee to be the only mechanism providing for an acceptable outcome. Overall, the Committee concluded that the granting of the consent in this manner would be consistent with the purpose of the Resource Management Act 1991.

Finally, the Committee noted that submitters L A Nicol and P W Carr in a joint submission had requested that any trees or hedges on the northern side of Huntly Road be restricted to a height of 2 metres, so as to protect their dwelling from any shading. Given the width of Huntly Road, and that the planting of shelterbelts and other trees is permitted within the Rural Zone, the Committee did not consider such a restriction appropriate or necessary. In that regard, it agreed with the comments made at the hearing by Mr Cubitt.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Right of Appeal

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

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

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

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

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

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

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Keith Hovell', is positioned above the printed name.

Commissioner Keith Hovell
Chair
Hearings Committee

Resource Consent Application – Land Use LUC-2017-222

*That pursuant to Sections 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of residential activity subject to the conditions imposed under Section 108 and 220 of the Act, as shown below:*

Location of Activity: 91 Formby Street, Outram

Legal Description: Lot 2 Deposited Plan 7816 (Computer Freehold Register OT370/243)

Lapse Date: 27 September 2022, unless the consent has been given effect to before this date.

Conditions

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 7816 & Pt Sec 1 Blk V West Taieri SD,' and the accompanying information submitted as part of LUC-2017-222 received by Council on 17 May 2017, except where modified by the following:*
2. *The designated building platform shall be reduced in area to 40 metres by 20 metres, by deleting a 10 metre strip from the southern portion of the platform. A revised plan incorporating this change shall be submitted to the Resource Consent Manager for the Council records, showing dimensions for both the extent of the platform and set back from the adjacent boundaries.*
3. *That only one residential unit shall be established on 91 Formby Street in the location of the building platform.*
4. *The residential dwelling and all accessory buildings, including those required for any agricultural activity on the site, shall be fully contained within the building platform.*
5. *That the residential dwelling shall have a maximum height of 10.0m.*
6. *No topsoil shall be removed from the site.*
7. *That an "application for Water Supply - New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to the new house. Details of how the house is to be serviced for water shall accompany the application.*
8. *Upon approval by Water and Waste Services Business Unit, the water service connection shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*
9. *That the consent holder shall enter into a covenant with the Dunedin City Council restricting the subdivision of the Residential-5 zoned land within this site from the Rural-zoned land. There shall be no additional residential development of the Residential 5-zoned land.*

Advice Notices

- 1 In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
- 5 This is a resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 6 All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 7 It is advised that in the event of any new development of the new lots, Transport will review the provisions for access and parking at the time of any building consent or resource consent application.
- 8 It is advised that any vehicle access from a road carriageway to the property boundary is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).

Issued at Dunedin this 27th day of September 2017



Commissioner Keith Hovell
Chair
Hearings Committee

Resource Consent Applications

Subdivision Consent SUB-2017-43
Land Use Consent (Lot 2) LUC-2017-223

*That pursuant to Sections 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed District Plan, the Dunedin City Council **grants in part** consent to a **non-complying** activity being the subdivision of land and the establishment of residential activity subject to the conditions imposed under Section 108 and 220 of the Act, as shown below:*

Location of Activity: 107 Formby Street, Outram

Legal Description: Lot 2 Deposited Plan 512917 (CFR 797550)

Lapse Date: 27 September 2022, unless the consent has been given effect to before this date.

Conditions

Subdivision SUB-2017-43

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Lot 2 DP 7816 & Pt Sec 1 Blk V West Taieri SD,' and endorsed "Option A2" as attached, except where modified by the following:*
2. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.*
 - b) *There shall be no Lot 9. The land depicted on the proposed subdivision scheme as Lot 9 shall be held in its entirety with land within at least one of Lots 1 to 7. The combined area shall be shown as a new lot on the survey plan.*
 - c) *That Lot 8 hereon shall be transferred to the owner of Lot 1 DP 512917 (Computer Freehold Register 797549) and one Computer Freehold Register issued for both parcels (see CSN Request 1478934).*
 - d) *A plan of the proposed building platform on the land subject of 2(b) above shall be submitted to the Resource Consent Manager for the Council records, showing dimensions for both the extent of the platform and set back from the adjacent boundaries. This plan shall be attached to the consent notice required by 3(c) below.*

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

- a) An "application for Water Supply - New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection.*
- b) Upon approval by Water and Waste Services Business Unit, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*
- c) A consent notice shall be prepared for the new lot containing the bulk of the Rural-zoned land, subject of 2(b) above, for the following on-going condition:*

'There shall be only one residential unit constructed on this site'

'The residential dwelling and all accessory buildings, including those required for any agricultural activity on the site, shall be fully contained within the proposed building platform.'

'The Residential-5 zoned land of this site shall not be subdivided from the Rural-zoned land.'

'No topsoil shall be removed from the site'.

Land Use LUC-2017-223

- 1. *With the exception of that lot containing land subject of Condition 2(b) SUB-2017-43:*
 - a. Only one residential unit shall be established on each of Lots 1 to 7; and*
 - b. Any residential activity of those lots shall comply with the performance criteria of the Residential 5 zone as listed in Rule 8.11.2 of the District Plan unless further resource consent is obtained.*
- 2. *That the dwelling, including any accessory farm buildings, shall be fully contained within the approved building platform as shown on the consent notice plan attached to the property's title.*
- 3. *Access to the building platform of the rural lot shall be formed to 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.*
- 4. *The new dwelling on the rural lot shall 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.*
- 5. *A hardstand area shall be formed beside any tanks installed under condition 4 above so that a fire service appliance can park on it, if so required.*
- 6. *No topsoil shall be removed from the site.*

Advice Notices:

- 1 In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
- 5 This is a resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 6 All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 7 This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of any new access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
- 8 The consent holder is to ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.
- 9 The following documentation is recommended as best practice guidelines for managing erosion and sediment-laden run-off and for the design and construction of erosion and sediment control measures for small sites:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
- 10 It is advised that in the event of any new development of the new lots, Transport will review the provisions for access and parking at the time of any building consent or resource consent application.

- 11 It is advised that any vehicle access from a road carriageway to the property boundary is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).

Issued at Dunedin this 27th day of September 2017

A handwritten signature in blue ink, appearing to read 'Keith Hovell', is positioned above the printed name.

Commissioner Keith Hovell
Chair
Hearings Committee

Appendix 1: Copy of Approved Plan for SUB-2007-43:
(Scanned image, not to scale)

