

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 23 October 2018

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2018-84
LAND USE LUC-2018-419
35 & 35A MUSSELBURGH RISE
DUNEDIN

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 23 October 2018. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2. DESCRIPTION OF ACTIVITY

- [2] 35 and 35A Musselburgh Rise, Dunedin, is a cross lease development situated on a very long and narrow parcel of land. The parcel is legally described as Lot 1 Deposited Plan 11751, and has 1110m² of area. It is 9.6m wide at its narrow end, widening at the rear to a width of 15.8m, and is nearly 100m long. There are two existing residential units with adjoined garages situated at its northwest (rear) end.
- [3] The site has frontage to a short road formed within the Musselburgh Rise road reserve. The short road is an off-shoot of Musselburgh Rise, and runs parallel with the main road. The subject site is situated at its cul-de-sac head.
- [4] The two existing residential units were subject to a cross lease subdivision as shown on DP 432747, dating from December 2010. The original cross lease, however, dates from 1971 (DP 12435) and was updated in 2010. 35 Musselburgh Rise is the very rear house, and is held by lease on Area 1 DP 432747, in Composite Computer Register 525449. The title includes a 1/3rd share of the fee-simple parcel, shown as Area A on the plan.
- [5] 35A Musselburgh Rise is situated in front of the other house, and is held by lease on Areas 2 DP 432747, in Composite Computer Register 545450. It has a 2/3rd share of the fee-simple parcel, shown as Areas B and C on the plan.
- [6] Both units obtain access via rights of way over the leg-ins of 29, 31 and 33 Musselburgh Rise. The rights of way fall approximately 0.3m short of the side boundary of the subject site. There are two sections of existing rights of way over this 0.3m strip for the subject site, but these easements do not align with the actual crossing points to the garages so the two existing residential units do not currently have full legal access rights to their garaging.

- [7] The applicant seeks to re-subdivide the cross lease properties so as to create three fee-simple lots. The residential unit of 35 Musselburgh Rise will be situated on proposed Lot 1, a site of 332m² which will align with the extent of the present Covenant Area A.
- [8] Proposed Lot 2 will be a site of 278m² containing the residential unit of 35A Musselburgh Rise and its curtilage. This will be smaller than the present Covenant Area B.
- [9] Proposed Lot 3 will be a vacant site of 500m² situated at the south-eastern (front) end of the site. It will have frontage to the cul-de-sac head of Musselburgh Rise. The applicant intends to build a new dwelling on Lot 3, and has submitted plans and elevations of the intended design. The dwelling will have internal garaging.
- [10] The applicant also seeks to create a new right of way over this 0.3m wide strip of 33 Musselburgh Rise so as to provide full access rights to the three proposed lots.

3. ACTIVITY STATUS

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

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

The Dunedin City District Plan.

- [14] The site is zoned **Residential 1**. The extreme northwest corner is shown on the Hazards Register as **10111 – Intensified Shaking**. The general area is shown as **11454 – Coastal Inundation**.

Subdivision

- [15] Subdivision is a restricted discretionary activity in the residential zones where the application complies with Rules 18.5.3 – 18.5.6 and 18.5.9 – 18.5.12, and each resulting site meets minimum area and frontage requirements. Lots 1 and 2 will be under-sized and will not have frontage. Accordingly, the subdivision is considered to be a **non-complying** activity pursuant to Rule 18.5.2.

Land Use

- [16] Rule 8.7.1(i) lists residential activity at a density of not less than 500m² per residential unit as being a permitted activity for this zone provided that a residential unit can be built on an existing site of any size, subject to compliance with the performance criteria of Rule 8.7.2.
- [17] The existing residential development of Lots 1 and 2 will be established on new sites of less than 500m², and accordingly the residential development of Lots 1 and 2 is considered to be a **non-complying** activity pursuant to Rule 8.7.6(iii).

[18] Although not specifically relevant to non-complying activities, the performance criteria of Rule 8.7.2 provide guidance as to acceptable use of the sites. The residential activity of Lots 1 and 2 will fail to comply with the following:

- Rule 8.7.2(i)(b) specifies yards of 2.0m. The existing houses are built 1.1m from the northeast side yard, therefore having existing yard breaches of 0.9m. It is possible that the southwest corner of the unit of Lot 1 encroaches into the yard space in relation to the boundary of 33 Musselburgh Rise.
- The new boundary will follow the wall of the two garages on Lots 1 and 2, thereby creating a 2.0m yard breach by both garages in respect of the new boundary.
- Rule 8.7.2(ii) specifies a height plane angle requirement of 63° measured from existing ground level at the boundary. The existing units will breach the height plane angle in respect of the northeast side boundary and the new boundary between Lots 1 and 2.
- Rule 8.7.2(v) requires each unit to have at ground level 35m² of amenity open space that is capable of containing a 4.5m diameter circle. The northern yard of Lot 1 will not be capable of accommodating a 4.5m diameter circle.
- Rule 8.7.2(iv) specifies a maximum site coverage of 40% excluding land used for access to another residential unit. The site coverage of Lot 1, minus the land used for access to 36 Portobello Road, is approximately 53%, therefore breaching this rule by 13%. The site coverage of Lot 2 is approximately 49%, therefore breaching this rule by 9%.
- Rule 8.7.2(viii) requires access to comply with the Transportation Section. Rule 20.5.7(v)(b) specifies that an access serving seven to twelve residential units should have a legal width of 6.0m and a formed width of 5.0m. The existing driveway has a formed width varying between 4.2m and 5.5m, and is therefore under-width for at least some of its length.

[19] The future residential activity of Lot 3 will be a permitted activity subject to compliance with the performance criteria of Rule 8.7.2. The proposed house will fail to comply with the following:

- Rule 8.7.2(i)(a) specifies side and rear yards of 2.0m. The proposed unit will be approximately 1.25m from the boundary of the leg-in of 33 Musselburgh Rise, therefore breaching the yard space by 0.75m.
- Rule 8.7.2(ii) specifies a height plane angle requirement of 63° measured from existing ground level at the boundary. The proposed residential unit is expected to breach the height plane angle in respect of 1 Belmont Lane by an unspecified amount.
- Rule 8.7.2(viii) requires access to comply with the Transportation Section. Rule 20.5.7(v)(b) specifies that an access serving seven to twelve residential units should have a legal width of 6.0m and a formed width of 5.0m. The existing driveway has a formed width varying between 4.2m and 5.5m, and is therefore under-width for at least some of its length.

[20] The residential activity of Lot 3 is considered to be a **restricted discretionary** activity pursuant to Rule 8.7.4(i).

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

[21] The subject site is zoned **General Residential 1** in the Proposed Plan.

Subdivision Activity:

- [22] Rule 15.3.3.3 specifies that subdivision is a restricted discretionary activity in the Residential zones, subject to compliance with the performance standards. Rule 15.7.4.1 specifies a minimum site size of 500m² for the General Residential 1 zone. Lots 1 and 2 will be under-sized. The proposed subdivision is considered to be a non-complying activity pursuant to Rule 15.7.4.2.
- [23] Furthermore, Rule 15.7.1 requires subdivision to comply with Rule 6.8.1. Rule 6.8.1 requires access to be compliant with Rule 6.6.3. Rule 6.6.3.9(a)(ii) requires a driveway serving seven or more residential units to have a minimum legal width of 6.5m, and a minimum formed width of 5.0m, while a Rule 6.6.3.9(a)(i) requires a driveway serving six or fewer residential units to have a minimum legal width of 4.5m and a minimum formed width of 3.0m.. The shared access will be approximately 0.8m under-width in formation up to the driveway of the proposed house on Lot 3, and 0.3m under-width thereafter.
- [24] Under the Proposed Plan, activities have both a land use activity and a development activity component.

Land Use Activity:

- [25] Rule 15.3.3.3 specifies that residential activity is permitted in the Residential zones, subject to the performance standards. Rule 15.5.2.1 which specifies a minimum of 500m² of site area for the General Residential 1 zone. The residential activity of Lots 1 and 2 is considered to be a non-complying pursuant to Rule 15.5.2.7. This rule is not in effect or operative.

Development Activity:

- [26] Lots 1 and 2 are already developed.
- [27] Rule 15.3.4.3 specifies that new buildings up to or equal to 300m² are a permitted activity for the residential zones subject to the performance standards. The proposed residential unit will fail to meet the following:
- Rule 15.6.14 requires setbacks in the General Residential 1 zone of 4.5m from front boundaries and 2.0m from side and rear boundaries. The proposed dwelling will be set back approximately 1.25m from the southwest side boundary shared with 33 Musselburgh Rise, therefore breaching the setback by 0.75m.

Overall Proposed Plan Status:

- [28] Having regard to both the land use and development activity components under the Proposed Plan, the land use proposal is considered to be a non-complying activity. These rules are not in effect or operative.

NES Soil Contamination Considerations:

- [29] 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.
- [30] The applicant's agent has had a search of the Dunedin City Council (HAIL 2018-87) records undertaken. On reviewing the information provided, the applicant's agent comments in an email dated 11 October 2018, '... we do not believe the site has ever

been or was likely have been used for a hazardous activity or industry. As such we do not believe this proposed subdivision evokes the NES’.

Summary

- [31] The application was lodged on 25 July 2018, after the close of submissions on the Proposed Plan. The Residential zone rules are subject to submissions and could change as a result of the subdivision process. Accordingly, the Proposed Plan provisions are not relevant to the activity status of the application as determined at the time of lodgement.
- [32] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan, and is considered to be a **non-complying** activity. The activity status of the proposed land use is also determined by the Dunedin City District Plan, and is considered to be a **non-complying** activity.
- [33] At the time of issuing this subdivision consent decision, none of the relevant Proposed Plan rules have been given effect or made operative. The relevant provisions are subject to submissions and could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision and land use application.

4. NOTIFICATION AND SUBMISSIONS

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

Person	Owner	Occupier	Address	Obtained
Fiona Jean White	✓	✓	31 Musselburgh Rise	19 June 2018
Clare Elizabeth Curran	✓	✓	36 Portobello Road	17 June 2018
Leslie Zetland & Isla Jean Griffin	✓	✓	33 Musselburgh Rise	21 June 2018
Johannes Jacobus Adrianus Maria Van Leeuwen	✓	✓	29 Musselburgh Rise	17 June 2018

- [35] The proposed development of proposed Lot 3 involves a height plane angle breach in respect of the southwest side boundary of 1 Belmont Lane. No affected party approval was obtained from this party, and as such, the applicant requested that the application be limited notified. The owners of 1 Belmont Lane were notified on 28 August 2018.
- [36] One submission in opposition was received at Council following notification. The submission is summarised in the table below. A copy of the submission is appended to this report in Appendix C.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
Werner van Harselaar	Oppose	• Submitter does not accept height plane angle breach in respect of their boundary. • Consent not given. • Statement that all parties have given approval only accurate in respect of the western boundary; not the eastern. • Amenity values of area include large historic character buildings, trees and open spaces. • The infilling will be detrimental to this as a cumulative effect.	Yes

		• A part double-storey house right on the boundary will have impact on 1 and 2 Belmont Lane. • Subdivision of a non-complying site sets a precedent for further infilling in this character area. • Does not want breach of side yard and height plane angle performance criteria. • Neighbour at 2 Belmont Lane looks across their driveway to trees and vegetation. They do not want the house on the boundary. Height plane angle breach affects them as well. • Requests that the Committee consider the cumulative impacts of infilling in character area. • Any development should comply with District Plan to preserve integrity of the Plan.	
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5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

[38] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.

[39] Neither the District Plan nor the Proposed Plan allows any subdivision to occur as of right. All subdivisions are either restricted discretionary activities where the proposal meets all District Plan requirements or non-complying activities where the proposal does not. Council rarely declines consent for proposals that create new sites meeting the minimum lot size, access, servicing and other requirements of the District Plan. In such cases, the subdivision consent is a means of ensuring to Council's satisfaction that all necessary subdivision matters, e.g. infrastructure, are adequately addressed, and is not an indication that the proposal is deficient in some way.

[40] In this case, the proposed subdivision is a non-complying activity under the rules of the District Plan because of the undersized nature of two of the new lots. No subdivision of this land into lots of the sizes proposed, except for vacant Lot 3, is anticipated under the rules of either Plan.

- [41] In regards to the proposed land use for the new lots, the District Plan specifies a minimum site size of 500m² per residential unit, but allows a dwelling to be built on an existing site of any size. The proposed subdivision will create two undersized lots with existing dwellings. Proposed Lot 1 is the same as the current cross lease title for this dwelling. The cross lease title for 35A Musselburgh contains land intended for a third dwelling which was never built. If proposed Lots 1 and 2 were existing sites, they could be developed with a residential unit as of right; the outcome would be the same as the existing development. The vacant site created by this subdivision, Lot 3, will be a compliant site which can be developed with a residential unit as a permitted activity.
- [42] The subject site has a total area of 1110m². The District Plan allows two houses to be built on a site of this size as of right. There are no limits to the size of the houses except that any development needs to meet the bulk and location requirements (maximum height, yards, and site coverage), and provide on-site parking and amenity open areas. Accessory buildings for permitted activities are permitted in their own right. As such, the applicant could demolish one of the existing houses and build in the position proposed for the house of Lot 3 as a permitted activity subject to compliance with the performance standards. Or, both existing houses could be retained and a garage with loft, or a sleepout, could be built in the position of the proposed house of Lot 3. The District Plan allows a building to be constructed in the position of the house of proposed Lot 3.
- [43] The District Plan allows a maximum site coverage of 40%, with land used for access to other properties excluded from the calculation. As such, site coverage is calculated for this land on a basis of a land area of approximately 1065m². 40% of 1065m² is 425m². The existing units (including garages) have a floor area of approximately 286m². Provided any new development does not exceed a site coverage of more than approximately 139m², then additional development on the subject site will be compliant for the overall site coverage. One or both existing houses on-site could be demolished and larger houses built as part of the permitted baseline.
- [44] There are two large trees on the land of 35A Musselburgh Rise which are not protected by the District Plan, and can be removed by the property owner at any time. A third large tree has already been removed and the stump left. Likewise, vegetation on the subject site up to the boundaries can be cleared by the property owner. There is no expectation that any of the vegetation on-site must be retained.
- [45] The Proposed Plan is currently not in effect or operative, but this will change on 7 November 2018 when the decisions on the Proposed Plan submissions are released. At that point, the rules for this zone will come into effect. While the actual rules given effect remain to be seen, the rules as notified indicate that family flats will be acceptable. To qualify as a family flat, the flat must be ancillary to a primary residential dwelling and on the same site, must be connected to the same services, share the electricity account, share the same access, be smaller than 60m², and be occupied by an immediate family member. Under the family flat scenario, a building for residential use could be built in the position proposed with much the same effects on any neighbouring properties. While this is not currently part of the permitted baseline, it will be very shortly, and probably prior to the decision on this consent application being released by Council.
- [46] The receiving environment is relevant to this proposal. The surrounding environment is a well-established residential area with mature gardens. Most neighbouring sites are of irregular shape, and the subject site shares a long driveway with 29, 31 and 33 Musselburgh Rise and 36 Portobello Road. The irregular property shapes have resulted in some very narrow sites, although the site areas are generally compliant for minimum site size. 19 Musselburgh Rise has two houses on a site of 738m², so development at a density greater than the District Plan allows is not unrepresented in the area.

- [47] The existing development on the subject site is also part of the environment. The subject site has two existing houses which are on a site of 1110m² but are arranged with much tighter curtilages, and in the case of 35 Musselburgh Rise, within an existing cross lease title that provides less than 500m² of land for the unit. 35A Musselburgh Rise occupies a 2/3rd share of the subject site which, as it occupies two covenant areas, B and C, indicates that it was intended to be land for two units. The flats were built in 1971, and the original cross lease subdivision completed the same year.
- [48] In summary, there is no permitted baseline to apply for subdivision. The subject site has two existing units with established curtilages, and the applicant seeks to create a new vacant site of 500m² with 9.6m of frontage. The development of this land with a single residential unit is a permitted activity subject to compliance with the performance criteria. A new dwelling could be built on this site in a position clear of the height plane angle, and all other bulk and location requirements, as of right, provided one existing dwelling was removed or converted to an accessory unit. It is likely that a family flat will become part of the permitted baseline in the near future.
- [49] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 8.13 and 18.6.1 of the District Plan:
- Lot Size and Dimensions and Physical Limitations
 - Easements & Encumbrances
 - Bulk and Location
 - Infrastructure
 - Hazards
 - Earthworks
 - Transportation
 - Amenity Values
 - Cumulative Effects
 - Sustainability
- [50] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site.
- Lot Size and Dimensions (Assessment Matter 18.6.1(q)) and Physical Limitations (18.6.1(k))**
- [51] The proposed subdivision will create three new lots of 332m², 278m², and 500m² respectively. Minimum lot size for the Residential 1 zone is 500m², so proposed Lots 1 and 2 will be significantly under-sized. In this case, however, the development of proposed Lots 1 and 2 is already established and currently held in separate cross lease titles. The cross lease plan also indicates by identifying 'Covenant Area C' that a third property was intended although no residential unit was in place at that time, nor has one been built since.
- [52] The boundaries of proposed Lot 1 coincide with the present curtilage of Area 1 (the house of 35 Musselburgh Rise). The fact that the new lot is only 66% of minimum site size is, in effect, inconsequential as it reflects the entire area currently represented by Covenant Area A and which is occupied by the residential activity of 35 Musselburgh Rise.
- [53] The situation is similar in respect of proposed Lot 2. It is only 56% of minimum site size, but is already occupied by the existing unit of 35A Musselburgh Rise. In this case, proposed Lot 2 does not fully align with the extent of Covenant Area B and is smaller. The southeast yard has been reduced from 10.34m to 7.0m. This still allows sufficient open space to satisfy the amenity open space requirements, but will maximise the amount of land within proposed Lot 3.

- [54] Proposed Lot 3 will have an area of 500m². This is larger than Covenant Area C which was intended as a third building site at the time of the cross lease subdivision but will allow a new unit to be built on-site without requiring a mature oak tree to be removed. The application has promoted Lot 3 as a complying lot, so there will need to be at least 500m² within this site following subdivision. The site will be 10.5m wide which is narrow for a property, but is in this case the maximum width available. The proposal includes a house design for this lot. The proposed house is not fully compliant with bulk and location requirements for the zone, and it is because of a height plane angle breach that the application was limited notified to the immediate neighbour of 1 Belmont Lane.
- [55] Proposed Lots 1 and 2 are already developed, and there is a viable building proposal for Lot 3 (although possible the building will need to be narrower or lower if it needs to meet the height plane angle). There are no known geotechnical issues affecting this land which are expected to compromise the building potential of this land. Accordingly, there is no expectation that the proposed subdivision will create any site having physical limitations rendering it unsuitable for future use.

Easements (18.6.1(i)) and Encumbrances

- [56] There are a number of easements registered on both the existing cross lease titles in respect of the fee-simple site of Lot 1 DP 11751. Easement Certificate **321303** created rights of way over the shared driveway to provide Lots 1, 2 and 3 DP 11434 (29, 31, and 33 Musselburgh Rise) with full access rights.
- [57] The subdivision of Lot 3 DP 11434 (33 Musselburgh Rise) then created Lots 1 and 2 DP 11570 (the present 33 Musselburgh Rise and the underlying title for 35 Musselburgh Rise), with the easement document being revised by Variation of Easement **338634** to ensure all the lots still had full rights of way. The subdivision of DP 11570 introduced a gap of 0.3m between the edge of the rights of way and the boundary of Lot 2 DP 11570 although Lot 2 DP 11570 still had access rights.
- [58] Lot 2 DP 11570 was subdivided in March 1968 to create Lots 1 and 2 DP 11751. Lot 1 DP 11751 is the subject site of this application, and Lot 2 DP 11751 was amalgamated with Part Lot 13 DP 4150 to become 36 Portobello Road. Transfer **343204** created an additional right of way over the upper end of the subject site in favour of 36 Portobello Road. This easement will carry down automatically onto the title of proposed Lot 1.
- [59] Transfer **363660** addressed the matter of the gap between the existing rights of way and the subject site by creating a short right of way 'bridge' for pedestrian and vehicular use. The bridge is 5.5m wide. Unfortunately, it does not align with the vehicular entranceway to the garaging on the subject site.
- [60] The applicant seeks to rectify the above situation, and to provide access to proposed Lot 3 from the existing rights of way, by creating a new right of way easement running the length of the 0.3m gap. This will allow the residents of proposed Lots 1 to 3 to cross this strip in any location along the existing driveway. It is likely that this is already occurring, given that the driveway provides access to the two existing residential units and there is no physical barrier in place between the drive and the property boundary. The proposed right of way is acceptable.
- [61] The applicant will also create a party wall easement along the new boundary between proposed Lots 1 and 2 to recognise the shared wall of the garaging.
- [62] It is possible that not all of the existing right of way easements are required for each of Lots 1, 2 and 3, and that some tidying-up of the existing situation would be appropriate. The right of way of Transfer 363660, for example, will become redundant. It is acceptable to cancel the existing right of way easements where they are not required if the applicant so decides.

Bulk and Location (8.13.3)

- [63] The subject site is narrow, and as such, there are yard and height plane angle breaches in respect to the side boundaries. The two existing residential units have existing breaches next to the property of 1 Belmont Lane (to the northeast of the subject site) which do not change with the proposed subdivision in any way, and are therefore acceptable. Likewise, the existing residential units have breaches in respect of the boundary of 33 Musselburgh Rise to the southwest. These breaches affect the shared driveway, but are existing breaches that do not change with the proposed subdivision.
- [64] The subdivision will introduce a new fee-simple boundary between the garages of the existing residential units on proposed Lots 1 and 2. In fact, there is currently a covenant boundary between the garages as part of the cross lease subdivision, so the bulk and location issues of having buildings up to the boundary is not a new one; it is merely the nature of the boundary which is changing. As the units are existing structures, there is no issue with the bulk and location breaches although it should be noted that the introduction of a fee-simple boundary within 1.0m of a building might have implications for fire rating and insurance which is not present with the cross lease titles.
- [65] The proposed residential unit of Lot 3 will have a 0.75m side yard breach in respect of the western side boundary next to the right of way. The owners and occupiers of all the users of the driveway have provided affected party approval to the proposal, and as such, pursuant to section 104(3)(a)(ii), the Council must not have regard to any effects on these parties. Accordingly, the side yard breach, and any associated height plane angle breach, is acceptable in respect of these parties.
- [66] The proposed unit for Lot 3 will maintain the 2.0m yard requirement in respect of the boundary shared with 1 Belmont Lane but is likely to breach the height plane angle. The application is not clear on this, and states: *'The proposed unit on Lot 3, although 2.0m off the eastern boundary, will likely breach the height plane angle in terms of the boundary shared with 1 Rochester Terrace (sic) ... depending on final build levels.'* It is therefore possible that the floor levels of the new house on Lot 3 will be low enough, or the building redesigned, so as to be clear of the height plane angle.
- [67] Because of the proposed height plane angle breach, the adjoining neighbour of 1 Belmont Lane has been identified as an affected party. The property owner, Mr van Harselaar, has not provided affected party approval and has submitted in opposition to the application. Mr van Harselaar's concerns are more in regard to the infill development of the land and the effects on amenity rather than the proposed height plane angle breach in particular. If the building were to be relocated a further 0.5m or so westwards, so as to clear the height plane angle, I doubt that Mr Harselaar would feel any differently about the proposal. The submission also identifies the neighbour at 2 Belmont Lane as being an affected party, although Council does not agree given that a wide strip of Mr van Harselaar's land is in between and a fully permitted structure could have very similar effects on this party.
- [68] The proposed height plane angle breach will be variable along the length of the building. The elevations show it to be approximately 10° at the two-storey structure behind the garage, and this will be the greatest breach given that the ground level rises in relation to the floor level, and the house is single-storey elsewhere. The section of the maximum breach will be approximately 27m from the closest corner of the house on 1 Belmont Lane, with a small shed on that property being positioned in front of the proposed house. The adjoining garden is well vegetated and used for access to the house of 1 Belmont Lane. It is my opinion that the proposed breach will have few effects on the residence or property of 1 Belmont Lane or the adjoining garden area.

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

- [69] The Policy Analyst, Three Waters department, has considered the application. She advises that the Council's GIS records show a 100mm diameter water supply pipe and a 150mm diameter wastewater pipe Musselburgh Rise.

Density assessment

- [70] Residential 1 rules in the Dunedin District Plan set a minimum site size of 500m², but allows one under-sized site provided the overall density is compliant. However, the subdivision will create two under-sized lots, and the overall density does not comply so this exception does not apply. The overall site is 1110m² which is 390m² under-sized for three lots.

Assessment of effects on Three Waters infrastructure

- [71] The Policy Analyst advises that the Council has hydraulic models for many of the City's water, wastewater and stormwater networks. The effect of new development on those networks can be evaluated against current performance, and against foreseeable future demand. District Plan zoning indicates where development is anticipated, and the density of development.

- [72] Development beyond that anticipated by the District Plan may:

- Be accommodated by existing infrastructure, both now and in the foreseeable future;
- Be accommodated by existing infrastructure only because anticipated permitted development in other areas has not yet occurred; or
- Not be able to be accommodated without upgrade or expansion of existing infrastructure.

- [73] Where there are capacity issues in the water network, water may not be able to be physically supplied, and the proposed development could cause pressure losses to existing customers. Where there are capacity issues in the drainage network, downstream wastewater and/or stormwater surcharge and flooding will be exacerbated. The Three Waters Graduate Hydraulic Modeller has assessed this application as described below:

Water

- [74] No issues have been identified with supplying water to this development. This property connects to the 100mm diameter water main along Musselburgh Rise. The model does not indicate any headloss issues in the pipe, and the current water pressure at this property is between 130m and 160m, which is higher the Dunedin Code of Subdivision and Development 2010 requires (30m to 90m). Fire Hydrant WFH04428 model predicted fire flow: 8.8l/s. Fire Hydrant WFH04421 model predicted fire flow: 41.86l/s

Wastewater

- [75] No issues have been identified with accommodating wastewater drainage from this development. The wastewater from this site drains to a 150mm diameter concrete wastewater pipe (FSL13094 – FSJ12662) on Musselburgh Rise and then connects to a 1650mm diameter trunk main to the Musselburgh pumping station. This area is included in the wastewater model but without a fully detailed calibration. Currently, the model indicates no manhole surcharging and/or overflow issues within the pipe (FSL13094 – FSJ12662) and downstream networks under the 1 in 10-year design rainfall event.

Stormwater

- [76] Due to the sites being under-sized, a Stormwater Management Plan must be provided to ensure that the post-development flows are no greater than pre-development

Conclusion

- [77] Although Three Waters does not generally support over-dense developments, the proposal does not appear to cause any adverse effects which are more than minor on the downstream network, and the properties can be sufficiently serviced for water. Therefore, Three Waters does not oppose this development provided the following conditions are satisfied.

Infrastructure Requirements:

Standard of Installation

- [78] All aspects of this development must be in accordance with the requirements of the Dunedin Code of Subdivision and Development 2010.

Water services

- [79] The Dunedin City Council Water Bylaw 2008 (revised 2011) sets out the requirements for connections to the water supply network. Each lot must be serviced from an individual Point of Supply. There is an existing single water connection to this property which is servicing both units. This connection may be retained for proposed Lot 1 while Lot 2 must be disconnected from this supply. New water connections are required for proposed Lots 2 and 3.
- [80] For a new water connection or any change to an existing water connection, an "Application for Water Supply" is required.

Firefighting requirements

- [81] All aspects relating to the availability of water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. There is a fire hydrant (WFH04428) 10.0m from the development entrance. Based on SNZ PAS 4509:2008, a W3 (25l/s) zone requires a fire hydrant within 135m and a second within 270m. The development is compliant with these fire hydrant requirements.

Stormwater services

- [82] The proposal is non-compliant to the current District Plan rules of minimum site size/density for the Residential 1 zone; therefore, a Stormwater Management Plan (SWMP) is required. The SWMP is to include:
- Stormwater calculations which state the difference between the pre-development flows and post-development flows and how to manage any difference in flow;
 - Discharges from all hard surfaces shall be detailed clearly in the plan; and
 - Detail stormwater management systems proposed for the development to accommodate for any excess runoff from extra impervious surfaces.
- [83] The SWMP must be approved by the Three Waters Development Engineer prior to any construction commencing.

Wastewater services

- [84] To reduce water consumption and therefore the volume of wastewater generated, the consent holder must install water saving devices including, but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers.

Private drainage services

- [85] Proposed Lot 1 has an existing dwelling which has both wastewater and stormwater drainage to Council-owned services in Musselburgh Rise. Service easements will be

required for the existing wastewater and stormwater drainage through new Lots 2 and 3.

- [86] Proposed Lot 2 has an existing dwelling which has both wastewater and stormwater drainage via shared services with the property on proposed Lot 1. This lot will require disconnection from its current services, and separate wastewater and stormwater drainage will need to be installed to Council-owned services in Musselburgh Road.
- [87] Proposed Lot 3's wastewater shall be to the wastewater pipe in Musselburgh Rise. Stormwater is to drain to the kerb and channel in the street. Both of these services must be separate to the other lots. It should be noted that these services might require pumping.

Easements

- [88] Service easements are required where any private water supply pipes or wastewater/stormwater laterals cross property boundaries, including within the rights of way, in favour of the property they service.
- [89] The Three Waters department has no issues with the proposed subdivision subject to conditions consistent with the above points.

Hazards (18.6.1(t))

- [90] Council's Consulting Engineer, Stantec, has considered the application in relation to the Hazards Register, street files and available aerial photography. He notes that the Hazards Register identifies this site as being subject to the risk of coastal inundation from sea level rise. This hazard is present in the northern edge of the property only.
- [91] The underlying geology consists of Cossyritic Photolite, Logan Pt., Orakanui of the second main eruptive phase. The site is generally sloping by less than 12°.
- [92] The earthworks for this application are limited to service trenching and the creation of a small retaining wall under 1.0m in height under the proposed house. The applicant appears to have sought appropriate advice regarding the proposed development.
- [93] Stantec recommends that the application not be declined on the ground of known natural hazards. There are no general potential instabilities of concern, and the proposal will not create or exacerbate instabilities on this or adjacent properties.
- [94] Stantec recommended the following conditions for consent:
- *All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s*
 - *Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.*
 - *Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development*
 - *Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction.*
 - *Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.*
- [95] As these conditions are all in regard to earthworks, and there is no earthworks component to this subdivision consent, nor any breach of the earthworks rules of the District Plan, the above conditions are more appropriately attached to the consent as advice notices.

Earthworks (Rule 17.7.5(ii))

- [96] The application notes that the future site development of Lot 3 will require earthworks. However, the volumes and other details of the earthworks are not yet defined, and as such, the applicant has not requested consent for earthworks at this time.
- [97] This consent does not address any earthworks for this subdivision associated with the subsequent development of the new lot, or the formation of any new accesses to the individual lots, manoeuvring areas, or retaining walls (should any be required). Should future earthworks forming the building platforms or access breach the performance standards of Section 17 of the District Plan at the time of development, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

Transportation (8.13.7 & 20.6)

- [98] The Graduate Planner, Transport, has considered the application. He notes that the subject site is long and narrow, and access will be via the rights of way over 31 and 33 Musselburgh Rise. Currently, the present housing of 35 and 35A Musselburgh Rise drives over a strip of land not having a right of way easement. The application will allow all three lots to have appropriate legal access.
- [99] Transport notes that the existing access currently serves six residential units. Rule 20.5.7(v)(b) requires a private access serving four to six residential units to have a minimum formed width of 4.5m. The proposed subdivision will increase the number of users from six to seven. As such, the minimum formed width should be 5.0m, although only over the section used by seven residential units.
- [100] The application claims that the right of way is legally and physically 4.4m wide at the roadside, widening to 5.9m where providing turning, and the reducing back to approximately 3.9m adjacent to the unit on 35 Musselburgh Rise. The driveway then widens to 4.5m adjacent to the applicant's attached garaging before then leading to 33 Musselburgh Rise and the rear of 36 Portobello Road. The driveway is hard surfaced and adequately drained for its duration. All interested parties associated with the driveway have given their written consent in support of this application.
- [101] This proposal seeks to add one additional user to the existing access, and to establish rights of way over 31 and 33 Musselburgh Rise in favour of Lots 1, 2 and 3. The Graduate Planner advises:

'In this instance, Transport is accepting of the under-width driveway, given the fact that granting consent will not significantly increase the intensity of the use of the driveway. In this instance, Transport considers it appropriate to refer to AS/NZS 2890.1:2004 – Clause 3.2.2, which states that 30 or more vehicle movements in a peak hour (in and out combined) would usually require provision for two-way traffic, i.e. minimum 5.5m formed width. Furthermore, with reference to the NZTA Research Report 453 – Trips Related to Land-use (2011), the proposed activity is anticipated to generate less than 30 vehicle movements in a peak hour, suggesting that provision for two-way traffic is unnecessary in this case.'

- [102] All potentially affected parties have provided written consent to the proposal. This reason, combined with the minimal increase in traffic volumes in the driveway, leads Transport to consider the effects on the existing driveway formation to be acceptable.
- [103] Both the existing units on proposed Lots 1 and 2 have on-site garaging. Likewise, the proposed dwelling on Lot 3 will have on-site garaging. All the houses are smaller than 150m², and the District Plan only requires one car park per residence. All three lots will be able to achieve on-site manoeuvring by using the right of way. All vehicles will be able to enter and exit Musselburgh Rise in a forwards direction.

- [104] In conclusion, Transport considers the effects of the proposal on the transportation network to be no more than minor, subject to an advice notice on the maintenance responsibilities for shared driveways.

Amenity Values (8.13.5)

- [105] 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"

- [106] Mr van Harselaar has submitted in opposition to the proposal partly because of concerns about effects on amenity. Mr van Harselaar identifies the character of the area as being large historic character buildings, mature trees, and open spaces.
- [107] Looking at old aerial photographs of the immediate area, it is clear that there were, up to about 1957, three very large residential properties in place although surrounding properties were smaller at approximately 500m² to 1000m². The three large properties have all since been subdivided (mostly between 1956 and 1968) to create smaller sites, although the houses still sit on large sites within the 2000m² to 3000m² range (these are the house of Mr van Harselaar's property at 1 Belmont Lane, and those of 31 Musselburgh Rise and 3 Belmont Lane). The subject site, however, and the great majority of other residential properties are smaller than 1200m². Several, including the subject site, have more than one dwelling on-site.
- [108] One means by which the District Plan maintains the amenity values of an area is through the density provisions of the various zones. The District Plan provides for residential activity at a density of not less than 500m² of site area per residential unit in the Residential 1 zone. Therefore, although some sites are sizeable for Residential 1-zone sites and some of the homes are large, smaller sites and smaller homes are also well represented in the neighbourhood. The character of the area is consistent with its Residential 1-zoning, and a greater density of development than is currently present would still be in accordance with the amenity values of the zone.
- [109] The subject site is unusual in that it is very long and narrow. In order to fit within the narrow width, the two houses on-site are themselves, relatively long and narrow. They are also confined to the northwest end of the subject site, in close proximity to the house of 1 Belmont Lane. The layout and location of these two existing residential units are not changing with this proposed subdivision, except that the yard space of 35A Musselburgh Lane is reducing at its southeast end. The vacant land of 35A Musselburgh Lane is now separated from the house by the fencing.
- [110] The proposal will result in one additional house on proposed Lot 3. The applicant has elected to place it at the northwest end of Lot 3, close to the existing houses on the subject site, in order to retain a large oak tree at the southeast end. This house is to be built on a complying site of 500m², therefore meeting the minimum site area for a residential activity in the Residential 1 zone rules. In this respect, the proposed residential site will meet the amenity values as anticipated by the District Plan. The adjoining neighbours have given written consent to the southwest yard and height plane angle breaches, and it is only proposal which includes the northeast height plane angle breach which does not have neighbouring approval.
- [111] The subject site is only large enough for two residential units, and this proposal will result in three. Council does not take proposals which breach the density provisions of the District Plan lightly, but the circumstances of this site are somewhat unusual. The layout of the cross lease development clearly intended that there be a third dwelling on the site, although none has actually been built. The curtilages of the existing

dwellings are tight and have resulted in the units being effectively on sites much smaller than 500m² for many years. This subdivision will convert the units and their 'Areas' from a cross lease development to a fee-simple subdivision; it will not change the layout of the two units and their curtilages physically to any significant degree. In terms of area, Lot 3 and its proposed development, are fully consistent with the expectations of the District Plan for the zone, and will not adversely affect the amenity values of the zoning.

- [112] The Proposed Plan will shortly be given effect. While the rules are still subject to change, it is worth noting that the Proposed Plan as notified allows for a single residential unit to have an associated 'family flat'. A family flat must be within the same site, must share the same services (including electricity), and must have the same driveway as the primary residential unit. Family flats must not be larger than 60m². The proposed house will have a floor area of approximately 76m² (including the loft), so is slightly too large for a 'family flat' but, otherwise, could be built meeting the requirements of the Proposed Plan as notified, making it a permitted activity. The effects on the neighbours would be little different to the proposed dwelling; it is merely the ownership structure (a separate site vs being owned in conjunction with the unit of 35A Musselburgh Rise) and the occupation (any resident vs a family member) which would be different, and this would not be obvious to a neighbour.
- [113] The proposed subdivision will create residential sites in a residential zone, and in this regard, the effects of the proposal are largely anticipated by the zoning of the site. While Mr van Harselaar might like a neighbourhood with large sites, large homes, and large gardens, this is not a District Plan requirement, and does not reflect the character of the area as anticipated by the District Plan. Furthermore, only some of the existing residential development in the immediate area meets this description, with most houses being more modest in size and their sites compliant with minimum site size but not generously endowed with land.
- [114] I consider that the effects of the existing two houses on small sites (in effect, if not fact) are already well established in this location, and the proposed dwelling will be on a compliant Lot 3. The proposed subdivision and development will therefore, in my opinion, maintain the amenity values of the surrounding area, and the Residential 1 zone.

Cumulative Effects (8.13.13)

- [115] The nature of cumulative effects is defined in *Dye v Auckland Regional Council* [2002] 1 NZLR 337, as the " ... *gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration*".
- [116] The District Plan directs to the Council to consider the cumulative effects of the proposal on the amenity and on the environment, including actual and potential effects. The proposed subdivision and one additional unit are not considered to have adverse effects on the amenity of the area as residential activity on a site of 500m² is in accordance with the expectations of the zoning. The two residential units on tight curtilages are already established as 35 and 35A Musselburgh Rise. While Lots 1 and 2 will be undersized, the overall density of development in the area (on a number of houses per land area basis) is well within expectations for the Residential 1 zone.
- [117] The submitted has concerns about cumulative effects arising from infill subdivision. While the District Plan does not permit three dwellings on a subject site of this size, the proposal should be viewed in terms of what could be built on the site as of right. This includes accessory buildings, a new larger dwelling in a different position, and possibly a family flat once the Proposed Plan decisions are released. A structure of this size or similar could be built in much the same position as a permitted activity.

- [118] If granted consent, the proposed subdivision and development of Lot 3 will result in additional residential activity in this location, but the surrounding area is a residential zone, and the residential activity itself is not an adverse effect. I do not consider that one additional residential dwelling will have adverse cumulative effects as the proposed activity is not out of character for the zone. The surrounding residential development and the proposed development will still be well within expectations for overall density of the Residential 1 zone.
- [119] When a development is over dense for the zoning, there is the risk that the additional demand on services will have cumulative effects on the capacity of the City's infrastructure. In this case, the Three Waters department has not identified any concerns about the capacity of reticulated services in the area. The proposal will not have adverse cumulative effects on the Council's infrastructure.

Sustainability (8.13.1)

- [120] The District Plan directs Council to consider the objectives and policies of the Sustainability section of the District Plan. An assessment of the objectives and policies of the Plan has been undertaken below in Section 6. The proposal is considered to be sustainable use of the City's land and infrastructure resources.

Summary

- [121] The proposed subdivision and residential development of the subject site will not have significant adverse effects in terms of its Residential 1 zoning and residential character despite the fact that the applicant seeks to create one additional lot and one new residential unit more than the density provisions of the District Plan allows. The new unit will be on a compliant Residential 1 zoned site, and the existing units already occupy relatively small curtilages. The proposal will not have any cumulative effects on infrastructure capacity or the amenity values of the area.
- [122] It is my opinion that the proposed height plane angle breach next to 1 Belmont Lane will have very few effects on that property given the location of the proposed breach and the relationship of the proposed dwelling and the existing dwelling of 1 Belmont Lane. I believe that Mr van Harselaar's concerns are more general in nature than the proposed height plane angle breach. If the proposed dwelling were to fully comply for bulk and location matters in relation to this boundary, the change in effects would be insignificant in respect of the neighbouring properties.
- [123] Overall, it is my opinion that the effects of the proposal will be no more than minor, particularly when viewed in the context of those activities which could be established on-site, in the position proposed, as of right.

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

- [124] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the Proposed Second Generation District Plan has been notified. At the time of writing this report, decisions on the Proposed Plan hearings have yet to be released. The objectives and policies of both Plans have been taken into account. The following section of the report assesses the proposal against the relevant objectives and policies of both plans.

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The proposed subdivision and residential development of the new lots is not expected to adversely affect the amenity values of this part of Dunedin. The development is for one new residential unit in a residential area and will maintain the amenity values of the area. The proposal is considered to be consistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The two existing houses are already fully serviced, and the proposed house can be serviced for water supply, and wastewater and stormwater drainage to Council services. There are no capacity concerns about the Council's existing infrastructure. I consider that the proposed subdivision is consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	There are no significant natural or physical resources that need to be protected. The proposed dwelling is to be located to the northwest end of Lot 3 so as to retain a mature oak tree on-site. The proposal is consistent with this objective and policy.
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The proposal is for residential activity in a residential zone and at a density of development which is not significantly different to the existing environment and the expectations of the District Plan. The proposal will not result in the indiscriminate mixing of activities. The proposal is consistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	The proposal has been assessed using the protocol established between Auhaka and the Dunedin City Council. The proposal is considered to be consistent with this objective and policy.
Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	

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.	Mr van Harselaar does not consider that the proposed development will maintain or enhance the amenity values and character of the residential area. However, the existing units already have a confined curtilage, and the new vacant site will be a complying site. The new development will be consistent with the expectations of the Residential 1 zone. Accordingly, it is my opinion that the proposal will maintain the amenity values and character of the zone, and is consistent with this objective and policy.
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.	The subject site is a very long and narrow parcel with two existing dwellings at one end. The proposed creation of Lot 3 and a new dwelling will make the most of a difficult site configuration and underutilised land of 35A Musselburgh Rise. The proposal is considered to be consistent with this policy.
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 and policy. The proposal involves residential development in a residential area. There are no issues with the service infrastructure for this development although Three Waters will require a stormwater management plan to control stormwater discharge. The proposal is not considered to have adverse effects on the management of Council's transportation infrastructure.
Policy 8.3.4	Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	
Policy 8.3.5	Restrict the density of subdivision and new residential development in areas in which water supply is currently inadequate.	There are no limitations on the supply of water to the new lots. The proposal is considered to be consistent with this policy.

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	There are no known natural hazards affecting the subject site which are likely to impact on the development potential of the land. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.2	Control buildings and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	There are no earthworks promoted specifically for this application. However, appropriate management of any excavations will be required at the time of developing Lot 3, and additional resource consent might be required. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The subject site is very long and narrow and has two houses at one end. The layout of the housing reflects the expectation that there would be three units built on this land. This subdivision proposal will complete the original intentions of the underlying subdivision. No further subdivision is anticipated. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.1	Avoid subdivisions that inhibit further subdivision activity and development.	
Policy 18.3.3	Allow the creation of special allotments that do not comply with the subdivision standards for special purposes.	
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	There are no indications that this land is unsuitable for subdivision. This policy is concerned with process.
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The subject site is fully serviced with connections to Council's infrastructure. There will be no adverse effects on adjoining land. The proposal is considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	No physical limitations preventing subdivision or development have been identified for this land. The proposal is expected to be consistent with this objective.
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The site is a residential site in a residential area. Currently, the land of proposed Lot 3 is underutilised and does not relate well to the dwelling of 35A Musselburgh. The proposed development will utilise this narrow strip of 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.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The proposed subdivision will not impact negatively on the City's natural and physical resources. The proposal is considered to be consistent with this objective.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The residential units of Lots 1 and 2 are already in place and serviced. Proposed Lot 3 will be fully serviced by Council's reticulated services. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The subject site utilises existing rights of way for access. The other parties using the shared driveway have all provided affected party approval and the use by one additional residential unit (over the initial stretch of the access only) is not considered to have adverse effects on these parties. Transport has considered the application, and has not identified any concerns about the additional use of the shared driveway. There are no implications for the wider transportation network as the subject site comes off a dead-end road extension. The new lot will access Musselburgh Rise proper at the same location as all the other properties on this section of road extension. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Proposed Plan

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

Strategic Directions

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 2.2.1	The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low.	There are no natural hazards identified by the Proposed Plan for this site. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.1.2	In calculating the likelihood and consequences of natural hazards consider: 1. risks from a single natural hazard event or from repetitive natural hazard events; 2. risks from a combination of different natural hazards, including any potential interplay between natural hazards; 3. risks that may arise in the next 100 years; and 4. risks that may increase in frequency or consequence as a result of climate change.	
Objective 2.2.4	Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.	The proposal is an infill subdivision which will create a breach of density for the Residential 1 zone, but will not result in any overall breach of density within the wider area, and will not have adverse implications for Council's infrastructure. The proposal is considered to be consistent with this objective.
Policy 2.2.4.4	Avoid subdivision that provides for residential activity of a fundamentally different type than provided for in the	The proposed subdivision will result in new residential development in accordance with the expectations of the General Residential 1

	various zones, through: 1. rules that prevent rural residential or urban-scale residential living in rural zones; 2. rules that prevent urban-scale residential living in a rural residential zone; 3. rules in urban environments, that require the density of residential activity to reflect the existing or intended future character of the residential area; and 4. rules that do not provide for family flats, that are provided solely to allow extended or large families to live together, to be converted into primary residential units through subdivision or other means.	zoning. While proposed Lots 1 and 2 will be undersized, both lots largely reflect the curtilages of existing dwellings on the subject site which area part of the established environment for the General Residential 1 zone. The proposal will, however, result in three lots on an overall site area large enough for two units. Having noted that, the Proposed Plan sets the maximum development potential for this land at one habitable room per 100m²; this allows eleven habitable rooms whereas the proposal will result in only five habitable rooms on this land. The proposal is considered to be consistent with this policy.
Objective 2.2.5	Development in the city is designed to reduce environmental costs and adverse effects on the environment as much as practicable, including energy consumption, water use, and the quality and quantity of stormwater discharge.	The proposed dwelling for Lot 3 will face northwest and will have a large outdoor living space on this end of the dwelling. The outdoor living areas for the houses on proposed Lots 1 and 2 are less than ideal, but also are existing situations. The development will be in an existing medium-density residential area with no protected heritage values. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.5.3	Encourage improvements to the environmental performance of new housing by: 1. assessment rules that consider the layout of subdivision in terms of solar orientation; 2. encouraging new medium density housing in parts of the city that have old housing stock that is not protected for its heritage values; and 3. rules that require outdoor living space to be on the sunny side of buildings, and requiring principal living areas to connect to the outdoor living space.	

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 proposal is considered to be consistent with this objective. No new roading infrastructure (public or private) is required for this subdivision proposal.
Objective 6.2.2	Land use activities are accessible by a range of travel methods.	The subject site is a suburban residential property which is accessible by car, bus, bike and pedestrian traffic. The proposal is considered to be consistent with this objective and policy.
Policy 6.2.2.1	Require land use activities whose parking demand either cannot be met by the public parking supply, or would significantly affect the availability of that supply for surrounding activities to provide car parking either on or near the site at an amount that is adequate to: 1. avoid excessive pressure on publicly available parking in the vicinity of the site (including on-street parking and off-street facilities); 2. avoid or, if avoidance is not possible,	

	adequately mitigate adverse effects on the availability of public parking in the vicinity of the site (including on-street parking and off-street facilities); and 3. ensure accessibility for (as relevant) residents, visitors, customers, staff and students who have limited mobility, including disabled people, the elderly and people travelling with young children.	
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development is not expected to have any adverse effects on the public roading network. The one additional residential unit will utilise an existing shared driveway and existing accesses onto legal road. On-site manoeuvring will be available within the right of way. The proposal is considered to be consistent with this objective and these policies.
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport network.	
Objective 6.2.4	Parking areas, loading areas and vehicle accesses are designed and located to: 1. provide for the safe and efficient operation of both the parking or loading area and the transport network; 2. facilitate the safe and efficient functioning of the transport network and connectivity for all travel methods.	The parking, loading and access for the proposed lots is not expected to have any adverse implications for the safe and efficient operation of the transportation network. The proposal is considered to be consistent with this objective.
Policy 6.2.4.2	Require all driveways to be designed to ensure: 1. the surfacing and gradient of the driveway allows it to be used safely and efficiently; 2. that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. 3. the width of the driveway is sufficient to allow the type and number of vehicles likely to be using it to do so safely and efficiently; and 4. sufficient distance is provided between shared driveways and dwellings.	

Public Health and Safety

	<u>Objective/Policy</u>	<u>Is the proposal Consistent with or Contrary to the Objective?</u>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater	The proposed subdivision and one additional residential unit will be serviced by Council's reticulated services. The proposal will maintain the efficiency of the public infrastructure. The

	public infrastructure.	proposal is considered to be consistent with this objective and policy.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	
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.	All three new sites will be fully serviced for water supply and wastewater drainage. The proposal is considered to be consistent with this policy.
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposal is not expected to have any consequences on peoples' health and safety. The proposal is considered to be consistent with this objective.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	The subject site has access to reticulated water supply and fire hydrants. The proposal is considered to be consistent with this policy.

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 over-dense for the General Residential 1 zone but involves existing residential units and a new vacant compliant lot. There is no expectation that the vacant Lot 3 will 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 three residential lots, two of which will be undersized. However, the undersized lots will largely reflect the occupation of the subject site by the two existing dwellings. Any shortfall in curtilage around the existing dwelling of Lot 1 is an existing situation which does not change with subdivision. The unit of Lot 2 will be on a smaller area, and will therefore have a reduced amenity. The vacant Lot 3 will be large enough for the new dwelling to face the northwest, and to have adequate outdoor amenity area. The proposal is expected to be generally 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.	The proposed unit for Lot 3 will be on a 500m ² site, and will maintain the yard space in respect of 1 Belmont Lane. There will be a height plane angle breach. The neighbour is opposed to the application, but a fully compliant building position would result in very little difference in effects on this party. The proposal is considered to maintain the amenity of the surrounding residential area, and is considered to be consistent with this objective and policy.
Policy 15.2.3.1	Require buildings and structures to be of a height and setback from boundaries that ensures there are no more than minor effects on the sunlight access of current and future residential buildings and their outdoor living spaces.	
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 proposed subdivision will have very little impact on the streetscape of Musselburgh Rise. The site has frontage to a dead end extension from Musselburgh Rise, and there is very little visibility of the site. The proposed house of Lot 3 will be situated away from the front boundary, and the garaging will not dominate the streetscape. While the subdivision will result in one unit more than the density provisions allow, the new site at the street frontage will be a site compliant for area, and its development with a residential unit is consistent with the intended character of the neighbourhood. The proposal is considered to be consistent with this objective and these policies.
Policy 15.2.4.1	Require development to maintain or enhance streetscape amenity by ensuring: 1. garages, carports and car parking do not dominate the street; 2. there are adequate areas free from buildings or hard surfacing; 3. buildings' height, boundary setbacks, and scale reflect the existing or intended future residential character; 4. shared service areas are not visible from ground level from outside the site; and 5. outdoor storage is managed in a way that does not result in unreasonable visual amenity effects or create nuisance effects.	
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.	The proposed residential activity will be on a compliant General Residential 1 site, but overall, there will be one residential unit too many for the subject site. The proposal is considered to be inconsistent with this policy.
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.	The proposed development is considered to meet all these criteria. The proposal is consistent with this policy.
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 for the development of the new house. It is unclear whether or not these earthworks will breach the earthworks rules of the Proposed Plan. If so, resource consent will be required to ensure the earthworks are undertaken appropriately. Any adverse effects of earthworks are expected to be temporary in nature during the construction period of the new house on Lot 3. 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.	

- [125] As the decisions on the Proposed Plan have not been released, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan. I note that the decisions on the Proposed Plan are due out on 7 November 2018 and the weighting of the objectives and policies between the District Plan and the Proposed Plan might change during the processing of this consent.
- [126] It is my view that the proposal is consistent with the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, transportation, sustainability, hazards, health and safety, strategic directions, and residential activity . However, it is inconsistent with those relating to density for the residential zones.
- [127] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. 26 notices of appeal were then received and the parties are now in the mediation period. Any issues not resolved through mediation will become the subject of an Environment Court hearing.
- [128] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 11: Natural Hazards. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:
- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
 - Policy 1.1.2: Economic wellbeing.
 - Policy 1.1.3 Social and cultural wellbeing and health and safety.
 - Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
 - Policy 3.1.3: Water allocation and use.
 - Policy 3.1.7: Soil values.
 - Objective 4.3: Infrastructure is managed and developed in a sustainable way.
 - Policy 4.3.1: Managing infrastructure activities.

7. DECISION MAKING FRAMEWORK

Part II Matters

- [129] It may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below.
- [130] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:
- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
 - 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",
 - 7(b) "The efficient use and development of natural and physical resources";
 - 7(c) "The maintenance and enhancement of amenity values"; and
 - 7(f) "Maintenance and enhancement of the quality of the environment".

- [131] With regard to Section 5(2)(a), it is considered that the proposed subdivision and residential development will sustain the potential of natural and physical land resource. The subject site is a residential site in a residential area, and has a large extent of undeveloped land due to the arrangement of the existing residential units on the site. This proposal will create a compliant vacant site suitable for future use as a residential property.
- [132] With regard to Section 5(2)(c), it is considered that the proposed subdivision will not have adverse effects on the residential environment. The other users of the shared right of way have provided affected party approvals and Council must not have regard to any effects on these parties. The adjoining neighbour on the other side of the subject site has submitted in opposition to the proposal and is concerned about infill housing and changes to the character of the area. A development that fully respects the height plane angle requirements in respect of this boundary will not change the nature of the proposed development or effects on the neighbouring party significantly but would mean that the neighbour is less likely to be considered an affected party.
- [133] With regard to Section 7(b), it is considered that the proposed subdivision will be the efficient use of the land at the front of the site which is not developed and not closely associated with the house of 35A Musselburgh Rise. The subdivision will create a compliant vacant site suitable for future development.
- [134] With regard to Section 7(c), it is considered that the proposed subdivision will not adversely affect the amenity values of the Residential 1 zone in this location. The houses of the undersized lots are already existing, and their curtilages established. The proposed subdivision is unlikely to result in any real change to the environment of these residential units.
- [135] With regard to Section 7(f), it is considered that the proposed subdivision will not change the quality of the environment significantly. There will be one additional residential unit built on a complying site.

Section 104

- [136] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment would be less than minor in terms of residential character, amenity values, transportation, infrastructure, and natural hazards.
- [137] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the proposal is consistent with the majority of objectives and policies of the Plans; however, it is inconsistent with that relating to density of development.
- [138] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [127] and [128] of this report it was concluded that the application is consistent with many of the relevant objectives and policies of the Regional Policy Statement for Otago regarding the management of natural and physical resources to support the wellbeing of people and communities.
- [139] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

- [140] Another matter relevant to the Committee is the consistent administration and interpretation of the District Plan. Further, the application is a non-complying activity

and case law gives guidance as to how non-complying activities should be assessed in this regard.

- [141] 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."

- [142] 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."

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

- [144] 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."

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

"Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined."

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

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

[147] The applicant considers that:

'... The cumulative effect of this increase in density is considered to be no more than minor given the characteristics which make up this site to be a true exception and not easily re-creatable. That there are few, if any, other sites demonstrating similar circumstances, presents this proposal as an opportunity to be assessed as unique in that environment. In doing so, this provides the potential to allay any concern that the granting of a favourable decision would set an undesirable precedent.'

[148] I agree that the situation with the subject site is unusual. Not only is the site an unusual shape with the existing occupation clustered at one end, but the cross lease subdivision clearly intended that there be three residential units on this land. The existing dwellings are already tightly confined on the site by the existing curtilages, and it is only the site of 35A Musselburgh Rise which will be reduced in land area by the subdivision. Even then, the new Lot 2 will reflect the actual occupation by the existing house on 35A Musselburgh Rise. The new lot will be narrow, but will meet minimum site size for the zone. A dwelling could reasonably be expected for this land.

[149] The land use proposal is non-complying as the existing units are to be established on new under-sized lots. The District Plan allows residential units to be established on existing lots of any size as a permitted activity, so the activity status is entirely due to the order of development and subdivision. The outcome is the same. In this case, the subdivision largely recognises the curtilage of the existing residential units and does not separate the units from open space. The cross lease subdivision obviously anticipated a third residential unit on this land, and was dimensioned accordingly. This proposal more or less repeats the underlying situation, but with a fee-simple subdivision rather than a cross lease. As such, the proposed subdivision and land use are not expected to undermine the integrity of the District Plan. This situation is unlikely to lead to a plethora of like applications as the situation is quite unusual.

Non complying status (s104D)

[150] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.

[151] It is my opinion that the subdivision and development of this subject site will have adverse effects which are no more than minor the residential amenity and character of the area. In respect of the objectives and policies of both Plans, the proposal is considered to be consistent with the majority of the objectives and policies of both plans.

[152] Overall, in my opinion, the proposed subdivision and development of the subject site will meet the both branches of the section 104D test. As a consequence, the Committee can consider granting consent to the proposal.

8. RECOMMENDATION

SUB-2018-84

*That pursuant to section 34A(1) and 104B of the Resource Management Act 1991, and after having regard to sections 104 and 104D of the Act, and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of Lot 1 DP 11751 (CCRs 525449 and 525450) at 35 and 35A Musselburgh*

Rise, Dunedin, into three lots, subject to the conditions imposed under sections 108 and 220 of the Act, as shown on the attached certificate.

Land use LUC-2018-419

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

- *The retention of the existing residential units on new under-sized Lots 1 and 2 SUB-2018-84;*
- *The bulk and location breaches of the existing buildings on Lots 1 and 2 SUB-2018-84 in respect of the existing and new boundaries;*
- *Amenity open space on Lot 1 SUB-2018-84 which is incapable of containing a 4.5m diameter circle;*
- *The bulk and location breaches of the new residential unit on Lot 3 SUB-2018-84 in terms of the existing side boundaries; and*
- *An under-width access for the number of users;*
-

at 35 & 35A Musselburgh Rise, Dunedin, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.

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

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of the subject site will be minor for the following reasons:
 - a) The subject site is a very narrow site where the bulk of the land associated with 35A Musselburgh Rise has limited connectivity to the residential activity on this site. The actual curtilage of 35A Musselburgh Rise is confined to a smaller area next to the house, as confined by existing fencing. The proposed area of Lot 2 will meet the minimum outdoor amenity area requirements. The proposed subdivision will have little impact on the outdoor living space of the house of 35A Musselburgh Rise, and none at all on the outdoor living space of 35 Musselburgh Rise.
 - b) The original cross lease subdivision and the titles of the subject site indicate that there was always an intention to have three residential units on this land. Although the planning regime has changed since the cross lease subdivision was given effect, the layout of the two units and covenant areas still reflect the original intention. The construction of a new residential unit on the undeveloped land at the southeast end of the subject site will be in accordance with the original intentions for the development of this overall site, although the District Plan only expects two units on the land.
 - c) The proposed construction of an additional residential unit will have no adverse implications for Council's water or wastewater drainage infrastructure. The Three Waters department has asked for a stormwater management plan because of undersized Lots 1 and 2, but there are no concerns about the discharge of stormwater from this site either.
 - d) The effects of the under-width right of way will be confined to the subject site and the other right of way owners and users. These parties have provided affected party approval to the proposal, and as such, Council must not have regard to the effects on these parties. The use of the existing driveway is

therefore acceptable. The proposed subdivision will also resolve an existing situation where the existing residential units are crossing over land with no access easements because of the narrow strip along the edge of the right of way.

- e) The height plane angle breach in respect of the northeast boundary is small. While the neighbour has objected to the proposal, his concerns are not in respect of the height plane angle breach as such. A building which is fully compliant for bulk and location along this boundary is unlikely to have effects on the neighbour which are any different to a fully compliant building proposal. I note that there are buildings which could be built on this land as fully permitted activities. The same issues with changes on amenity and infill housing would still be evident. The new development is, however, almost in accordance with the expectations of the Residential 1 zone, and the proposed height plane angle breach will be very minor when considering the use of the land immediately adjacent and the position of the neighbour's house.
2. The existing cross lease subdivision and the arrangement of the two existing dwellings on-site, combined with the very long and narrow dimensions of the subject site are considered to be a true exception. The existing occupation and use is already confined to areas smaller than 500m², at one end of the property. The proposed vacant lot will be compliant with the Residential 1 zone rules for minimum site size and frontage. It is unlikely that another residential property will replicate these circumstances, and I considered that the Committee can grant consent without there being an undesirable precedent set.
3. The proposal meets both branches of section the 104D test. The Committee is in a position to consider the granting of consent to the subdivision and land use proposals.

Report prepared by:


Lianne Darby
Planner

23.10.18

Date

Report checked by:


John Sule
Senior Planner

23/10/2018

Date

Appendix 1: Draft conditions for consent:

SUB-2018-84

That pursuant to section 34A(1) and 104B of the Resource Management Act 1991, and after having regard to sections 104 and 104D of the Act, and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of Lot 1 DP 11751 (CCRs 525449 and 525450) at 35 and 35A Musselburgh Rise, Dunedin, into three lots, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:

1. The proposal shall be given effect to generally in accordance with the plan prepared by Terramark, entitled, 'Lots 1-3 being a Proposed Subdivision of Lot 1 DP 11751,' dated July 2018, as attached to this certificate in Appendix One, and the accompanying information submitted as part of SUB-2018-84 received at Council on 25 July 2018, except where modified by the following:
2. That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:
 - a) That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.
 - b) That service easements must be created over Lot 2 and 3 in favour of Lots 1 and 2, as necessary, and must be shown on the survey plan in a Memorandum of Easements.
 - c) That a right of way must be created over the full length of the 0.3m wide strip of land (Lot 1 DP 11570) in favour of Lots 1, 2 and 3, and must be shown on the survey plan in a Memorandum of Easements.
 - d) That a party wall easement must be created along the new boundary of Lots 1 and 2 where the garage wall is shared, and must be shown on the survey plan in a Memorandum of Easements.
3. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:

Services:

- a) As the two existing units currently share one water supply connection, the existing water supply to the residential unit on Lot 2 must be disconnected, leaving the existing connection serving the residential unit of Lot 1 only.
- b) An "Application for Water Supply" is to be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to Lots 2 and 3. Details of how the lots are to be serviced for water shall accompany the "Application for Water Supply".
- b) Upon approval by the 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 Stormwater Management Plan must be provided to the Three Waters Group for approval before any construction commences on the new dwelling of Lot 3. The Stormwater Management Plan must outline how stormwater from each lot of the subdivision will be managed to ensure

post-development flows do not exceed pre-development flows, and identify and address any downstream effects of the stormwater generated by the development, including any mitigation required.

The SWMP must be attached to the consent notice of condition 3(d) below:

- d) *That a consent notice must be prepared for registration on the titles of Lot 3 for the following on-going condition:*

'The development and on-going stormwater management of this site must be undertaken in accordance with the attached Stormwater Management Plan which applies to this site and the wider area. Any requirements for this site specified in the Stormwater Management Plan must be adhered to as part of the establishment of residential development on this site.'

This consent notice may be rewritten to address specific requirements of the SWMP, if applicable, in consultation with Council's Subdivision Planner at the time of obtaining s224(c) certification.

- e) *The existing dwelling on Lot 2 must be disconnected from the shared stormwater lateral serving the existing units of Lots 1 and 2. A new separate stormwater lateral discharging to the Musselburgh Rise kerb and channel must be installed for Lot 2.*
- f) *A new stormwater lateral to Council-owned services in Musselburgh Rise must be installed for Lot 3.*
- g) *The existing dwelling on Lot 2 must be disconnected from the shared wastewater lateral serving the existing units of Lots 1 and 2. A new separate wastewater lateral discharging to the Council-owned services in Musselburgh Rise must be installed for Lot 2.*

Land use LUC-2018-419

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

- The retention of the existing residential units on new under-sized Lots 1 and 2 SUB-2018-84;*
- The bulk and location breaches of the existing buildings on Lots 1 and 2 SUB-2018-84 in respect of the existing and new boundaries;*
- Amenity open space on Lot 1 SUB-2018-84 which is incapable of containing a 4.5m diameter circle;*
- The bulk and location breaches of the new residential unit on Lot 3 SUB-2018-84 in terms of the existing side boundaries; and*
- An under-width access for the number of users;*

at 35 & 35A Musselburgh Rise, Dunedin, subject to conditions imposed under section 108 of the Act, as follows:

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Terramark, entitled, 'Lots 1-3 being a Proposed Subdivision of Lot 1 DP 11751,' dated July 2018, and the house plans and elevations prepared by Structural Integrity, as attached to this certificate in Appendix One, and the accompanying information submitted as part of LUC-2018-419 received at Council on 25 July 2018, except where modified by the following:*

2. *Maximum site coverage on Lot 3 (house and any accessory buildings) must not total more than 140m² in order to maintain a compliant site coverage across Lots 1, 2 and 3 SUB-2018-84.*

Advice Notes:

1. In addition to the conditions of a 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. A similar responsibility exists under the Health Act 1956.
2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
3. It is the consent holder's responsibility 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.
4. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for any construction work as part of the subdivision.
5. 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.
6. 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:
 - Environment Canterbury, 2007 'Erosion and Sediment Control Guidelines for the Canterbury Region' Report No. CRCR06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).
7. The installation and connection of a new water service to the existing public water reticulation system or the upgrading of an existing water service connection will be carried out after the Consent Holder has completed and submitted an 'Application for Water Supply' form to the Water and Waste Services Business Unit or an approved AWSCI, as per the Dunedin City Council Water Bylaw 2011. A quote for the required work must be obtained from an approved water supply connection installer (AWSCI). The list of AWSCI's, application form and the full process can be found here <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
8. 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. Any new development must be within 135m of a fire hydrant, otherwise the proposal will be non-compliant with fire-fighting requirements.
9. Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
10. It is advised that any drainage issues and requirements (including the necessary works) will be addressed via the building consent process. Separate stormwater and foul sewage drains are required for the new lots.

11. Certain requirements for building on this land may be stipulated via the building consent process, and are likely to include the following points:
 - Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - Surface water is not to create a nuisance on any adjoining properties.
 - For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
 - As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.
12. 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.
13. 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).
14. It is recommended that a formal agreement be entered into by the owners and users of the shared driveway in order to clarify their maintenance responsibilities.
15. This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the associated formation of any new access, manoeuvring areas, or retaining walls within the lots. 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.
16. When undertaking earthworks as part of this subdivision proposal, or when developing or redeveloping the new lots, the developer will need to comply with the following:
 - All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s;
 - Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.
 - Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.
 - Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction.
 - Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.