

## Report

**TO:** Hearings Committee

**FROM:** Shane Roberts, Consultant Planner

**DATE:** 28 July 2016

**SUBJECT:** **RESOURCE CONSENT APPLICATION  
SUB-2016-34  
10 RICCARTON ROAD WEST  
JS & DS SEBELIN**

### 1 INTRODUCTION

- [1] This report has been prepared on the basis of information available on 28 July 2016. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

### 2 DESCRIPTION OF PROPOSAL

- [2] Resource consent is sought to subdivide the two existing Computer Freehold Registers (CFRs) into two new lots. Proposed Lot 1 (19.6ha) fronts Riccarton Road West, while proposed Lot 2 (19.4ha) is a rear site utilising a leg-in from Riccarton Road West.
- [3] A right of way easement is proposed over Lot 2 in favour of Lot 1 to provide for a combined access point.
- [4] A copy of the application, including plans of the proposed subdivision, is contained in Appendix 1 of this report.

### 3 DESCRIPTION OF SITE AND LOCATION

- [5] The subject land at 10 Riccarton Road West is held in two CFR's.
- [6] Part Section 5-6 Block III East Taieri Survey District, held in CFR OTB1/698, and having an area of 36.6936ha. The site is an almost square property except for a rectangular section excluded at its southeast corner. The site has an extremely gentle overall slope downwards towards the south. The site is in pasture, and is currently vacant land. There is a shared driveway along the northwest boundary which provides access to Wal's Plant World on the adjoining property. There are a number of accesses to this CFR from Riccarton Road West.
- [7] Lot 1 Deposited Plan 10269, held in CFR OTB1/697, and having an area of 2.4281ha. This small, rectangular parcel completes the overall square shape of the greater site. There is no development on this land. There is an access to this CFR from Riccarton Road West.

- [8] Both existing CFRs have frontage to Riccarton Road West along their southwest boundaries, and the South Island Main Trunk Line along their south boundaries. It appears that both CFRs utilise a portion of the railway land for grazing purposes as there is no fenceline along the boundary, but one is located closer to the track. The Owhiro Steam runs through the site, along with a series of drainage runners and an ORC scheduled drain.

#### **4 HISTORY OF THE SITE**

- [9] There are some recent resource consents lodged with Council that have some relevance to the current application.
- [10] SUB-2015-108 and LUC-2015-577 were submitted to Council as one application on 24 November 2015, but the applicant requested that the subdivision and land use components be processed separately. The application proposed a subdivision to create two Lots with a residential dwelling proposed on each Lot. Council recognised the two applications as being closely related, and declined to process them separately. The subdivision consent application was then withdrawn, leaving only the land use application with the Council. As there were no Proposed Plan rules in effect applying to the land use component of the proposal, Council was obliged to issue consent for the second house as a controlled activity.
- [11] As a result LUC-2015-577 was granted on 22 January 2016 for a second residential dwelling on the property of 10 Riccarton Road (combining both CFRs), although there is no existing dwelling on-site and no specific house proposals. The first residential dwelling on the subject site was a permitted activity, whereas the second dwelling on a Rural-zoned site of greater than 30ha was considered to be a controlled activity. In this case, the land use consent defines the location of the two proposed houses by two 40m by 40m building platforms. As noted in the decision for land use consent:

*'For the sake of clarity, a single dwelling fully complying with the provisions of the Dunedin City District Plan (DCDP) can be built in any location on CFR OTB1/698 as a permitted activity under the present planning regime. This application for a second dwelling on-site has been presented to Council on the basis that the two proposed houses for this land will be confined to the building platforms respectively. Accordingly, it is expected that if there is to be a second dwelling, the first will be built within one or the other of the defined building platforms. Building the first house elsewhere on-site does not give effect to this consent for the purpose of constructing a second dwelling.'*

- [12] Conditions imposed on this consent included those regarding access arrangements and minimum floor levels for the identified building platforms.
- [13] The applicant now proposes subdivision of the application site with two new Lots proposed with an approved building platform on each Lot.

#### **5 ACTIVITY STATUS**

- [14] The situation with respect to subdivision of the site is complicated in this case by the fact Dunedin currently has two district plans: The Operative Dunedin City District Plan (the Operative Plan) and the Proposed Dunedin City District Plan (the Proposed Plan). The Proposed Plan was notified on 26 September 2015 and is currently proceeding through the First Schedule Process. Until the rules of the Proposed Plan become operative, the Operative Plan remains in effect. Where the rules of the Proposed Plan have been given immediate legal effect those provisions need to be considered alongside those of the Operative Plan.

- [15] While the Rural Section rules of the Proposed Plan are subject to submissions, and therefore have yet to be finalised, Rule 16.7.4 (minimum site size for rural zones) and Rule 16.9.5.5 (assessment of subdivision performance standard contraventions – minimum site size (surplus dwelling subdivision)) were given immediate legal effect pursuant to section 86D of the Resource Management Act 1991 at the time of notification. This direction was sought from the Court because the Council has significant concerns with the subdivision of rural land, and the potential consequences of development in anticipation of more restrictive rules for subdivision.
- [16] In terms of the **Operative Plan** the site is zoned Rural. The relevant rule is 18.5.1 which states:
- "Rule 18.5.1 Discretionary Activities (Restricted)*
- The following are discretionary activities (restricted):*
- (i) Subdivision applications in the Rural Zone where the application complies with Rules 18.5.3 – 18.5.5, 18.5.9 and 18.5.10, and each resulting site is 15 ha or greater."*
- [17] The application complies with Rules 18.5.3 – 18.5.5, 18.5.9 and 18.5.10, and each resulting site is 15 ha or greater.
- [18] Therefore the activity is a discretionary activity (restricted) in terms of the Operative Plan.
- [19] In terms of the **Proposed Plan** the site is zoned Rural – Taieri Plains. The relevant rule is Rule 16.7.4.
- [20] The table in Rule 16.7.4.1 identifies the minimum size for new resultant sites in the Rural – Taieri Plains Zone as 40ha.
- [21] 16.7.4.3 then states:
- "General subdivision that does not comply with the standard for minimum size is non complying..."*
- [22] Both proposed Lots are less than 40ha.
- [23] Therefore the activity is a non-complying activity in terms of the Proposed Plan.
- [24] For the sake of completeness the other Rule that has legal effect upon notification (16.9.5.5) is not relevant for the consideration of this application as it relates to the assessment of certain restricted discretionary activities under Rule 6.7.4.
- [25] Additionally in terms of the Proposed Plan, the site is shown as containing high class soils, is subject to a Hazard 3 – Flood overlay, and is subject to Designation 218 – East Taieri Drainage Scheme. Owhiro Stream is also indicated as a water body requiring an esplanade strip or reserve.
- [26] Having regard to both Plans, overall the application is a **non-complying activity**.
- [27] In terms of the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) issues regarding the potential contamination of the site were addressed under LUC-2015-577. It was concluded the NES was not

relevant to the proposal. No additional information has been identified that would change this position therefore no additional consent is required under the NES.

- [28] It should be noted that if the subdivision application is granted in its current form then LUC-2015-577 will be redundant as residential activity at a density of on residential unit per 15 hectares is permitted under the Operative District Plan. Furthermore, once the new titles are issued, LUC-2015-577 is void as that consent was issued for the underlying CFR and on the basis of the existing lot size.
- [29] If there is a delay in establishing the residential activity once the new titles have been issued and the proposed District Plan is made operative in the interim, then a new land use consent may need to be applied to establish residential activity under the new operative rules.

## **6 WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS**

- [30] No written approvals were submitted with the application.
- [31] The application was publicly notified in the Otago Daily Times on 11 May 2016.
- [32] Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 13 June 2016.
- [33] Four submissions were received by the close of the submission period. Two submissions were opposed and two submissions were neutral.
- [34] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

| <b>Name of Submitter</b> | <b>Support/ Oppose</b> | <b>Summary of Submission</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Wish to be heard?</b> |
|--------------------------|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Otago Regional Council   | Oppose                 | <ul style="list-style-type: none"> <li>• Site is subject to natural hazard risk;</li> <li>• Concerned approval in terms of the rules of the proposed plan could set precedent;</li> <li>• Site contains an ORC scheduled drain.</li> </ul>                                                                                                                                                                                                                                             | Yes                      |
| Brian Millar             | Oppose                 | <ul style="list-style-type: none"> <li>• Current access to the property is used to service an adjacent nursery which has effects on the submitter;</li> <li>• Subdivision provides an opportunity for Council to purchase land from the Sebelins for Riccarton Road widening;</li> <li>• The resource consent that was granted for the additional dwelling did not consider the high class soils on the property;</li> <li>• The size of the properties is such that should</li> </ul> | Yes                      |

|                                         |         |                                                                                                                                                                                                                                                                                                                    |     |
|-----------------------------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                                         |         | <p>dwellings be constructed on high class soils it will be difficult for properties to make an economic return.</p>                                                                                                                                                                                                |     |
| Charles Bradfield and Katherine Brookes | Neutral | <ul style="list-style-type: none"> <li>• Additional dwellings and farm buildings will detract from amenity;</li> <li>• Subdivision provides an opportunity for Council to purchase land from the Sebelins for Riccarton Road widening;</li> <li>• Concerns with commercial vehicles using the driveway.</li> </ul> | No  |
| New Zealand Fire Service Commission     | Neutral | <ul style="list-style-type: none"> <li>• Seek that subsequent land use activity can provide for the operational requirements of the NZFS.</li> <li>• Seek that any dwellings are supplied with adequate fire-fighting supply.</li> </ul>                                                                           | Yes |

## 7 STAFF COMMENTS

- [35] Comments on the application were received from Water and Waste Services, Transportation, and MWH regarding Hazards and are attached in Appendix 3.

## 8 ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

- [37] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.
- [38] There is no permitted baseline for subdivision for the site.
- [39] As discussed above LUC-2015-577 has been obtained to erect an additional dwelling on the site, on the basis of a building platform being identified for a primary dwelling (noting this was not actually specified).
- [40] Therefore the applicant could erect two dwellings on the site which does form part of the permitted baseline for the development of the site. Therefore the

development one would normally expect to follow a subdivision has already been assessed and given resource consent by Council.

[41] Therefore the consideration of environmental effects is limited to those arising from the rearrangement of cadastral boundaries of the two subject CFRs.

[42] As the activity status is non-complying, there is no restriction on the matters to which regard can be had when making an assessment of effects of the proposal. Accordingly, assessment is made of the following effects of the proposal:

- Rural Amenity;
- Transportation;
- Provision for Stormwater, Water and Sewerage
- Natural Hazards;
- High Class Soils;
- Owhiro Stream and Scheduled Drain '04'
- Positive Effects;
- Cumulative Effects;

### **8.1 Rural Amenity**

[43] The existing amenity of the site is characterised by open pasture, with fencing and some shelterbelts. Surrounding land uses include the South Island Main Trunk Line, a nursery and farming activities. Along the western side of Riccarton Road West there are a number of dwellings and other buildings in close proximity to Riccarton Road, along with boundary hedging – which contrasts with the subject site which is not screened from view from Riccarton Road West.

[44] The proposed subdivision will facilitate the development of the site for residential purposes; noting a consent has already been granted by Council to allow two dwellings on the site.

[45] The subdivision will allow for the independent development and occupation of the two dwellings and their curtilage. This will bring with it a degree of change to the rural environment as what is currently open pastureland will be occupied by dwellings, driveways and hardstand and other features associated with residential development such as amenity plantings and clotheslines. There will also potentially be some changes to boundary fencing.

[46] It is important to note the overall density resulting from the proposal is lower than currently anticipated by the Operative District Plan, however only two dwellings are permitted on the site (regardless of the Lots being 15ha or 19ha). Notwithstanding the density requirements of the Proposed District Plan are more restrictive the environmental effects arising from the proposal are not changed – it is more a matter of the density outcome not being aligned with the provisions of the Proposed District Plan.

[47] Overall, whilst there will be some changes to the amenity of the site I consider any effects arising from this change are of a less than minor nature.

### **8.2 Transportation**

[48] The Memorandum from Transportation identifies that an access upgrade to the site is required at the existing entrance to the site (the same upgrade imposed as a condition on LUC-2015-577). The memorandum also notes that there are no parking and manoeuvring issues associated with the sites and traffic generated by the proposal will have no more than minor effects.

- [49] I note the submission of Mr Miller has raised the issue of the existing use of the ROW by traffic from a neighbouring nursery. Whilst there may be some adverse effects arising from the use of the ROW by nursery traffic, it is assumed that these effects would have been a consideration in any resource consents obtained for the nursery. Additionally, the use of the ROW by a 'third party' is a right that cannot be derogated through this resource consent process.
- [50] I also note two submissions raised the matter of the subdivision being an opportunity for Council to take the land necessary to widen Riccarton Road West. I note a building line restriction is registered against the CFR of the larger parent property which protects the area subject to the building line restriction from development, in the event Council wished to take land for road widening in the future. The building line restriction will 'drop down' onto the two new CFRs, should consent be granted. As such, should the committee be of a mind to grant consent, they may wish to consider a condition in this respect is necessary.
- [51] I also note the submission of the New Zealand Fire Service Commission seeks the minimum formed width of any vehicular access to the dwellings onsite be a minimum of four metres wide with a vertical clearance of four metres in height. Should consent be granted, this too can be addressed by way of a condition. I note the existing land use consent for dwellings on the site requires a 3.5 metre wide vehicular access to be formed. This does not prevent the committee imposing a more onerous condition of a four metre wide access on the subdivision consent.

- [52] As such I consider any transportation effects arising from the proposal to be less than minor.

### **8.3 Provision for Stormwater, Water and Sewerage**

- [53] As noted above in Section 7, stormwater, water and sewerage have been assessed by Water and Waste Services.
- [54] The memorandum from Water and Waste Services does not suggest any specific resource consent conditions. The memorandum notes the site is outside of Rural Water Supply Areas and as such stormwater from roof surfaces will need to be collected for domestic water supply and sufficient water should be available to comply with the Fire Service Code of Practice for Fire Fighting Water Supplies. The Memorandum also identifies each lot will require onsite wastewater disposal.
- [55] Any future development onsite will need to make provision for onsite disposal of stormwater and sewerage and the provision of potable water, including through the capture of stormwater from building roofs. Water and Waste have not raised any concerns over the ability of the proposed Lots to adequately achieve this.
- [56] Further to this the submission of the New Zealand Fire Service Commission requests the provision of adequate water for firefighting purposes on the site. Should consent be granted, this too can be addressed by way of a condition.
- [57] As such I consider any effects related to the onsite provision of stormwater and wastewater disposal, and the provision of potable water to be less than minor.

#### **8.4 Natural Hazards**

- [58] The site is subject to a number of natural hazards, most notably flooding which is highlighted in the Proposed District Plan through the site being identified as a Hazard 3 Flooding area.
- [59] The Memorandum from MWH highlights the site is subject to natural hazards which indicates the site is exposed to flood hazards particularly ponding and sheet flow of stormwater overland, and notes the southern part of the property was subject to flooding from Owhiro Stream in 1923 and 2006. As such a minimum floor level requirement is required. The site is also identified as being potentially subject to liquefaction.
- [60] With regards to the minimum floor levels, these are a condition on LUC-2015-577 that were volunteered by the applicant.
- [61] This issue has been addressed through the conditions of LUC-2015-577 which specify minimum floor levels for the identified building platforms on the site. It is noted that should this application be approved the resultant Lots would be a complying size in terms of the Operative District Plan and the applicant would not necessarily need to rely on the LUC-2015-577 to establish residential dwellings on the site (the minimum density provisions of the Proposed District Plan did not have immediate legal effect). Should the applicant choose not to exercise LUC-2015-577 and seek to construct dwellings elsewhere on the site the dwellings will need to be constructed to a minimum floor level (noting the floor levels on LUC-2015-577 are specific to the identified building platforms). The floor level would need to be established at the time of lodging building consent.
- [62] The ORC submission also raised the issue of natural hazards for the site and have noted that the proposed building platforms of LUC-2015-577 appear to be outside of the area of potential risk of flooding from Owhiro Stream.
- [63] In undertaking the siting of any future dwellings on the site, and including the installation of access to the dwellings and surrounding hardstand the consent holder will need to ensure development on the site will not displace overland flows of stormwater onto adjacent properties.
- [64] As a result I consider any effects in relation to natural hazards to be less than minor, provided suitable conditions are imposed.

#### **8.5 High Class Soils**

- [65] Part of the site (the majority of the land to the north of Owhiro Stream) is identified as containing high class soils.
- [66] The explanation of Policy 6.3.10 in the Operative District Plan discourages residential activities on sites below 15 hectares. It is noted that both sites are in excess of 15 hectares though it is clear from the location of the building platforms authorised by LUC-2015-577 are in areas of high class soils. It is noted that Rule 6.5.4(v) under which LUC-2015-577 was considered as a Controlled Activity does not include consideration of effects on High Class Soils as a matter over which Operative District Plan has control.
- [67] The subdivision will result in further fragmentation of rural land to facilitate residential land use, however it is noted the property is currently in two (unevenly sized) CFRs therefore the subdivision does not create any additional Lots above what currently exists. Certainly it would be difficult to put the smaller current CFR to any productive rural use (noting the absence of high class soils).



- [68] There will a loss of 'available' high class soils through the establishment of driveways, building platforms and other hardstanding areas following the subdivision of the site. It should be noted the proposed density arising from the development (and resultant effects on versatile soils) is anticipated by the Operative District Plan; but not the Proposed District Plan.
- [69] It is considered the effects on high class soils arising from the proposal are minor.

### **8.6 Owhiro Stream, Public Access and Scheduled Drain '04'**

- [70] Two matters in relation to existing waterbodies on the site also require brief comment.
- [71] Firstly, the Owhiro Stream and Scheduled Drain '04' on the site are subject to Designation 218 in the Proposed District Plan. I do not consider the proposed subdivision gives rise to any effects upon this designation however future owners need to be aware nothing can be done in the area subject to the designation that could hinder the public work without the written approval of the requiring authority (ORC).
- [72] Secondly, given a waterbody traverses the site, an examination of whether an esplanade reserve or strip is necessary is required. I note the application is silent on this matter.
- [73] In terms of the Operative District Plan, Rule 18.5.5 does not identify Owhiro Stream as a water body requiring an esplanade strip or reserve. The Proposed District Plan requires under Rule 10.3.1 for a minimum 20m wide esplanade reserve along the bank or margin of Owhiro Stream. Rule 10.3.1 in the Proposed District Plan is not operative.
- [74] The key section of the Resource Management Act in this regard is section 230(5):
- "If any rule made under section 77(2) so requires, but subject to any resource consent which waives, or reduces the width of, the esplanade reserve or esplanade strip, where any allotment of 4 hectares or more is created when land is subdivided, an esplanade reserve or esplanade strip shall be set aside or created from that allotment along the mark of mean high water springs of the sea and along the bank of any river and along the margin of any lake, and shall vest in accordance with section 231 or be created in accordance with section 232, as the case may be."*
- [75] In this instance no rule made under section 77(2) (that has legal effect) requires the provision of an esplanade reserve or strip, therefore one cannot be required as a condition of subdivision. In my view this is somewhat unfortunate given the esplanade reserve or strip would adjoin a legal road providing easy access to the waterbody.
- [76] Any effects on Owhiro Stream, Public Access and Scheduled Drain 04 and public access are considered less than minor.

### **8.7 Positive Effects**

- [77] The proposed subdivision will provide an additional buildable Lot in the Rural Zone providing for various wellbeings for future owners.

## 8.8 Cumulative Effects (Assessment Matter)

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

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

- [79] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [80] The subdivision will result in further fragmentation of rural land which is a cumulative effect. It is noted this fragmentation is aligned with the density requirements of the Operative District Plan, but at odds with the density provisions of the Proposed District Plan.
- [81] Whilst there are some cumulative effects arising from the proposal these are considered to be less than minor.

## 8.9 Effects Assessment Conclusion

- [82] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor.

## 9 OBJECTIVES AND POLICIES ASSESSMENT

### 9.1 Assessment of Objectives and Policies of the Operative District Plan (section 104(1)(b)(vi))

- [83] Section 104(1)(b)(vi) of the Act requires the Council to have regard to any relevant provisions of the District Plan.
- [84] The following objectives and policies of the Operative District Plan were considered to be relevant to this application:

#### Sustainability Section

| Objective/Policy                                                                                                                | Is the proposal Consistent with or Contrary to the Objectives and Policies?                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Objective 4.2.1</b><br>Enhance the amenity values of Dunedin.<br><b>Policy 4.3.1</b><br>Maintain and enhance amenity values. | Whilst the proposal will result in a change to the amenity of the site, given the outcome is consistent with the density provisions set for the Rural Zone the resultant outcome is that which has been set by the Operative District Plan as appropriate in the rural zone.<br><br>Therefore I consider the proposal to be consistent with this Objective and Policy. |

#### Rural Section

| Objective/Policy                                                                                             | Is the proposal Consistent with or Contrary to the Objectives and Policies?                                                     |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Objective 6.2.1</b><br>Maintain the ability of the land resource to meet the needs of future generations. | The proposal will result in a small loss of high quality soils however this will not detract from the ability of the land to be |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>used for rural purposes.</p> <p>As such, I consider the proposal to be consistent with this policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Objective 6.2.2</b><br/>Maintain or enhance the amenity values and character of the rural area.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>The proposed subdivision results in two lots of a size that are above the minimum lot size requirement in the rural zone. I note a submitter has raised the issue of the subdivision detracting from their rural outlook however the proposal does not impinge upon the prevalent density requirements in the Operative District Plan. I also note approval has already been obtained for two dwellings on the site, regardless of the subdivision.</p> <p>Therefore I find the proposal to be consistent with this objective.</p>                |
| <p><b>Objective 6.2.4</b><br/>Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>No issues have been raised by Council staff regarding the provision of infrastructure to the site, aside from ensuring the access is upgraded to a suitable standard.</p> <p>I consider the proposal is consistent with this policy.</p>                                                                                                                                                                                                                                                                                                          |
| <p><b>Policy 6.3.3</b><br/>To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural Zone.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>The proposal will not result in further land fragmentation given the site is currently in two CFRs. It is likely some productive use (such as grazing) can still occur post subdivision. There is the potential for some conflict with adjoining land uses to arise (the adjoining nursery and South Island Main Trunk Line) however no submission has raised this issue. As discussed above the proposal meets the density requirements of the Operative District Plan, therefore I consider the proposal to be consistent with this Policy.</p> |
| <p><b>Policy 6.3.5</b><br/>Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner which avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(a) A predominance of natural features over human made features,</li> <li>(b) High ratio of open space relative to the built environment,</li> <li>(c) Significant areas of vegetation in pasture, crops and indigenous vegetation,</li> <li>(d) Presence of large numbers of farmed animals,</li> <li>(e) Noises, smells and effects associated with the use of rural land for a wide range of agricultural, horticultural and forestry purposes,</li> <li>(f) Low population densities relative to urban areas,</li> <li>(g) Generally unsealed roads,</li> </ul> | <p>Given the resultant lots are of a size that meets the density provisions of the Operative District Plan I consider the subdivision to be of a scale and intensity that maintains the character of the rural area.</p> <p>I consider that any effects of the proposal on those relevant elements of rural character listed in (a) to (h) can be adequately avoided, remedied or mitigated.</p> <p>As such I find the proposal to be consistent with this policy.</p>                                                                               |

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| (h) Absence of urban infrastructure.                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Policy 6.3.8</b><br>Ensure development in the rural and rural residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.                                                                                                                                                                                                                                                                           | No issues have been raised by Council staff regarding the provision of infrastructure to the site, aside from ensuring the access is upgraded to a suitable standard.<br><br>I consider the proposal is consistent with this policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Policy 6.3.9</b><br>Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and onsite effluent disposal.                                                                                                                                                                                                                                                                                                                               | No issues have been raised by Council staff regarding the ability supply water onsite or indication adequate wastewater disposal could not be achieved onsite.<br><br>I consider the proposal is consistent with this policy.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Policy 6.3.14</b><br>Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to:<br>(a) amenity values,<br>(b) rural character<br>(c) natural hazards<br>(d) the provision of infrastructure, roading, traffic and safety, or<br>(e) Landscape Management Areas or Areas of Significant Conservation Values.<br>Irrespective of the ability of a site to mitigate adverse effects on the immediately surrounding environment. | The Operative District Plan prescribes a minimum lot size in the Rural Zone is 15.0ha, and a single dwelling is permitted on a site greater than 15.0ha. Accordingly, the effects of the proposed subdivision, with a house situated on each lot, are anticipated by the District Plan therefore any cumulative effects on amenity or rural character that may arise are those that are already anticipated and set as an environmental outcome for the rural zone.<br><br>It is noted there are some natural hazard effects in relation to the site which can be addressed by way of a minimum floor level, and adequate design of hardstand areas to avoid displacement of overland stormwater flows.<br><br>I consider the proposal is consistent with this policy. |

#### Hazards Section

| Objective/Policy                                                                       | Is the proposal Consistent with or Contrary to the Objectives and Policies?                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Policy 17.3.1</b><br>Control development in areas prone to the effects of flooding. | The site is known to be potentially subject to the effects of flooding. Minimum floor levels have been set for two building platforms on the site to address potential flooding effects. It is also noted these platforms are located some distance from the Owhiro Stream.<br><br>Development in the area is controlled through consideration of the resource consent process, and the previous imposition of floor levels.<br><br>I consider the proposal is consistent with this Policy. |

#### Transportation Section

| Objective/Policy                                                                                    | Is the proposal Consistent with or Contrary to the Objectives and Policies?                         |
|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| <b>Objective 20.2.2</b><br>Ensure that land use activities are undertaken in a manner which avoids, | Through the imposition of conditions regarding the standard of access formation the proposal can be |

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| remedies or mitigates adverse effects on the transportation network.                                                                                     | undertaken in a manner that avoids, remedies or mitigates effects on the transportation network, maintain the safety of the network and not adversely effect the operation of the roading network. |
| <b>Objective 20.2.4</b><br>Maintain and enhance a safe, efficient and effective transportation network.                                                  |                                                                                                                                                                                                    |
| <b>Policy 20.3.4</b><br>Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network. | The imposition of conditions will also ensure the vehicle access is safe.                                                                                                                          |
| <b>Policy 20.3.5</b><br>Ensure safe standards for vehicle access.                                                                                        | As such the proposal is considered to be consistent with these objectives and policies.                                                                                                            |

**9.2 Assessment of Objectives and Policies of the Proposed District Plan (section 104(1)(b)(vi))**

- [85] The Proposed Plan was notified on 26 September 2015.
- [86] At the time of the issuing of this recommendation, no decisions have been made on the proposed Plan and all provisions are subject to submissions and could change as a consequence of the submission process.
- [87] However, the objectives and policies of the Proposed Plan must be had regard to in accordance with Section 88A(2) of the Act. This is particularly relevant for this application given the proposal requires consent under a rule which has been given immediate legal effect.

**Rural Zones**

| <b>Objective/Policy</b>                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Is the proposal Consistent with or Contrary to the Objectives and Policies?</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <b>Objective 16.2.1</b><br>Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika. | <p>The Objective seeks for Rural Zones to be reserved for 'productive rural activities'. I note the definition of Rural Activities includes activities such as domestic animal boarding and breeding, factory farming and grazing. The proposed lots are of a size that could support these activities. The Objective also states that residential activity should only be allowed in the rural zone where it directly supports farming. Whilst a matter for consideration through the First Schedule process, it would seem that in order to undertake a number of these 'productive rural activities' a dwelling onsite would be a logical and necessary requirement. In the case of the uses identified above animal welfare and husbandry reasons would certainly be justification for a dwelling onsite.</p> <p>It is not clear if productive rural activities will result from the application, but they certainly <i>could</i> be undertaken.</p> <p>It is noted that the presence of a residential dwelling on each resultant Lot will allow for the land to be farmed in some manner.</p> <p>Therefore, and somewhat unusually, I find the proposal to be consistent with the part of the policy regarding rural</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | activities, but contrary to the part regarding residential activity only being allowed where it directly supports farming.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Policy 16.2.1.5</b><br>Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.                                                                                                                                                                                                                                                                                                                                                                                                 | <p>It is unclear if residential activity on the site could support farming activity or if farming could be undertaken on the site.</p> <p>In terms of the referenced objectives; Objective 2.2.2 relates to energy resilience and is not considered relevant, Objective 2.3.1 relates to the protection of land for economic production (which is considered relevant) and 2.4.6 relates to the maintenance or enhancement of the character of the rural environment (which is also relevant). Objective 16.2.2 Objective 16.2.3 is not considered relevant as no land use is sought with this application. The proposal is considered consistent with Objective 16.2.4 as discussed below.</p> <p>The proposal is contrary to this Policy as the residential activity will not support farming.</p> |
| <b>Policy 16.2.1.7</b><br>Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>The proposal does not comply with the density standards for the zone (25 hectare minimum for residential activity) and is not a surplus dwelling subdivision because no building used for residential activity exists on the site (as is required by the definition in the PDP of surplus dwelling subdivision).</p> <p>The proposal is therefore contrary to this policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Policy 16.2.1.10</b><br>Only allow the subdivision of a surplus dwelling where: <ul style="list-style-type: none"> <li>a. the subdivision meets Policies 16.2.3.8 and 16.2.4.3.a, b and d;</li> <li>b. the dwelling is habitable and in good condition; and</li> <li>c. the subdivision will not result in any additional development potential for residential activity across resultant sites than would otherwise be provided for by the minimum site size standard.</li> </ul>                                                                                                                                                                    | <p>I do not consider this policy is relevant to the proposal as the proposal is <u>not</u> for a surplus dwelling subdivision as established above.</p> <p>I have however included it as it has been referenced by both the applicant and the ORC in their submission.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Objective 16.2.2</b><br>The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: <ul style="list-style-type: none"> <li>a. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised;</li> <li>b. the residential character and amenity of adjoining residential zones is maintained; and</li> <li>c. a reasonable level of amenity for residential activities in the rural zones.</li> </ul> | <p>The proposed activity could give rise to reverse sensitivity effects as residential activities are established onsite following the subdivision; particularly due to the presence of a nursery and the South Island Main Trunk Line adjoining the site. I note no submission raising these concerns were lodged and given the sizes of the resultant lots there is sufficient scope for residential activity to be undertaken in a location that is not in close proximity to these activities.</p> <p>The proposal will not alter the character and amenity of the adjoining Residential 6 Zone (which is separated from the site by the rail corridor) and Gladstone Road.</p> <p>There is no reason why the sites cannot provide a reasonable level amenity for</p>                            |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>any future residential activity.</p> <p>I consider the proposal to be consistent with this policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Policy 16.2.2.3</b><br/>Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>The applicant has resource consent for building platforms on the proposed lots. It is noted the applicant is not bound to these platforms in any regard and therefore any dwellings located outside of these platforms would need to comply with the bulk and location requirements of the Operative District Plan.</p> <p>Any other buildings (e.g. farm buildings) will need to comply with the bulk and location requirements of the relevant plan.</p> <p>I consider the proposal to be consistent with this policy.</p>                                                                                                                                                          |
| <p><b>Objective 16.2.3</b><br/>The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include:<br/>a. a predominance of natural features over human made features;<br/>b. a high ratio of open space, low levels of artificial light, and a low density of buildings and structures;<br/>c. buildings that are rural in nature, scale and design, such as barns and sheds;<br/>d. a low density of residential activity, which is associated with rural activities;<br/>e. a high proportion of land containing farmed animals, pasture, crops, and forestry;<br/>f. significant areas of indigenous vegetation and habitats for indigenous fauna; and<br/>g. other elements as described in the character descriptions of each rural zone located in Appendix A7.</p> | <p>Whilst again noting no land use is sought as part of this proposal, providing a single dwelling is erected on each Lot, the proposal will result in the retention of a high ratio of open space and predominance of natural features, a low density of residential activities.</p> <p>I cannot state with certainty any buildings will be rural in nature, scale and design.</p> <p>It is likely a large proportion of the site will remain in pasture.</p> <p>In terms of Appendix A7, I consider the proposal maintains those values identified as being important to the Taieri Plain.</p> <p>Overall I consider the proposal is predominantly consistent with this objective.</p> |
| <p><b>Policy 16.2.3.2</b><br/>Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>As discussed in section 8.1 the proposal will result in a density that does not comply with the density provisions of the Proposed Plan therefore the proposal will not maintain the rural character values the rural zone (when considering the density outcomes sought for the rural zone by the Proposed Plan).</p> <p>As such I consider the proposal to be contrary to this objective.</p>                                                                                                                                                                                                                                                                                       |
| <p><b>Policy 16.2.3.8</b><br/>Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>The Lot sizes are sufficient for any future dwelling to meet the bulk and location provisions of the Proposed District Plan (notwithstanding the Lot size being less than permitted).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Objective 16.2.4</b><br/>The productivity of rural activities in the rural zones is maintained or enhanced.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>It is noted the subdivision is a subdivision of two existing CFRs. The smaller CFR is of a size that would be exceedingly difficult to undertake a productive rural activity on. The</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>proposed subdivision will result in two new CFRs, each of a size that complies with the density provisions of the ODP (but not the PDP) which provides for a productive rural activity to be undertaken on each lot.</p> <p>At the very least the productive capacity of the rural zone is maintained by the proposal.</p> <p>Therefore I consider the proposal to be consistent with this objective.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Policy 16.2.4.2</b><br/>         Avoid activities other than farming in a high class soils mapped area, unless:<br/>         The scale, size and nature of the activity on the high class soils mapped area means that any loss of current or potential future rural productivity would be insignificant;...</p>                                                                                                                                                                                                                              | <p>In addition to this particular site containing high class soils, it is also subject to flooding. As such siting dwellings away from inundation sources is also desirable which does result in the location of the approved building platforms being on land containing high class soils.</p> <p>As there is no land use component proposed as part of this application, but noting the consent that exists for two dwellings on the site there may be small loss of rural productivity as a result of the application due to the coverage of high class soils by dwellings, driveways and hardstand. It should also be noted that the subdivision provides the opportunity for each resultant Lot to be individually occupied and for some form of productive rural activity to take place. The presence of a residence on the site is something that (dependent upon the style of rural activity) is necessary for animal husbandry reasons (for example) and can potentially allow for an increase in productivity than which currently exists.</p> <p>No information has been supplied however to establish the loss of rural productivity is insignificant however my analysis of Objective 16.2.4 concludes the productivity of rural activities is at least maintained by the proposal therefore it follow the proposal must also be consistent with Policy 16.2.4.2.</p> |
| <p><b>Policy 16.2.4.3</b><br/>         Only allow subdivision where the subdivision is designed to ensure any future land use and development will:<br/>         a. maintain or enhance the productivity of rural activities;<br/>         b. maintain high class soils for farming activity, or ensure any loss is no more than minor;<br/>         c. maintain land in a rural rather than rural residential land use; and<br/>         d. not increase the potential for reverse sensitivity from residential activities in the rural zones.</p> | <p>As discussed above the proposal offers the potential to at least maintain and potentially increase the productivity of the site (a), ensures the loss of any high class soils is no more than minor (b), potentially does change the nature of the land from rural to rural residential however I consider this is a function of land use consent having already been granted for two dwellings on the site (c) and may increase the potential for reverse sensitivity through the presence of a commercial activity on an adjoining property, and the presence of the South Island Main Trunk Line adjoining the property (d). I note no submissions have been received from the adjoining commercial activity or KiwiRail on this</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



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|                                                                                                                                                                                              | <p>matter.</p> <p>I consider the proposal to be consistent with this Policy.</p>                                                                                                                                                                                                                                                 |
| <p><b>Policy 16.2.4.4</b><br/>Avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities.</p> | <p>The proposed subdivision may reduce rural productivity (or may improve it) but will not displace rural activities – for example, the rural activity currently undertaken on the site, grazing, will still be able to be undertaken on the site.</p> <p>As such I consider the proposal to be consistent with this policy.</p> |

### Natural Hazards

| Objective/Policy                                                                                                                                                                                                                                                                                                          | Is the proposal Consistent with or Contrary to the Objectives and Policies?                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Objective 11.2.1</b><br/>The risk from natural hazards, including climate change, is minimised, in the short to long term.</p>                                                                                                                                                                                      | <p>Whilst there is a risk of natural hazards affecting the site the applicant has obtained consent for two building platforms on the site which have a minimum floor level applied to them which will mitigate the risk from flooding.</p> |
| <p><b>Policy 11.2.1.8</b><br/>In the hazards 1 and 2 (flood) and hazard 3 (coastal or flood) overlay zones, require new buildings intended for sensitive activities to have a floor level that mitigates risk from flooding (including coastal flooding) and rising groundwater so that the risk is no more than low.</p> | <p>Therefore I consider the proposal to be consistent with this objective and policy.</p>                                                                                                                                                  |

## 9.3 Overall Assessment

- [88] Having assessed the objectives and policies individually I am now required to make an assessment as to how the proposal fits in an overall sense, with the objectives and policies of both plans. In particular the key objectives and policies are those relating to rural zones of both plans.
- [89] In terms of the Operative District Plan the proposal will maintain the amenity of the rural zone, and will not create adverse effects with respect to infrastructure (including roading). There will be some cumulative effects arising from increased development in the rural zone but given the density is of a nature anticipated by the plan it I consider these effects to be acceptable.
- [90] It is clear the proposal is consistent with the relevant objectives and policies of the Operative District Plan.
- [91] Turning to the Proposed District Plan, the proposal is contrary to a number of policies particularly those that restrict residential activity to instances where it supports farming activity. I do note no information has been provided to establish if the resultant lot are of a size to support farming activity. The policy is also contrary to the policy that seeks to avoid residential density that does not comply with zone density standards unless it is for a surplus dwelling subdivision.
- [92] I do find that the proposal is consistent with some of the objectives and policies for the zone particularly those that seek for rural activities to be undertaken 'post subdivision'.
- [93] Quite logically, given the provisions of each plan regarding the appropriate size for subdivision in the Rural Zone, the proposal finds considerably more support from the Operative Plan than the Proposed Plan. This is because the

Proposed Plan seeks an environmental outcome for the rural zone for a lower density of development than is currently provided for.

- [94] I note that any plan weighting is not appropriate as part of the gateway test.
- [95] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with the provisions of the Operative District Plan and contrary to the Proposed District Plan.

#### 9.4 Assessment of Regional Policy Statements (section 104(1)(b)(v))

- [96] 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. The Proposed Regional Policy Statement was notified in 2015 and decisions on submissions are currently pending.

##### Natural Hazards

| Objective/Policy                                                                                                                                                                                                                                                    | Is the proposal Consistent with or Contrary to the Objectives and Policies?                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Operative RPS</b>                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                              |
| <b>Policy 11.5.3</b><br>To restrict development on sites or areas recognised as being prone to significant hazards, unless adequate mitigation can be provided.                                                                                                     | As identified above building platforms for the site with a specified floor level have obtained resource consent. It is also noted the submission of the ORC does not state the flood hazard risk for the site is significant.<br><br>I consider the proposal is consistent with this policy. |
| <b>Proposed RPS</b>                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                              |
| <b>Objective 3.2</b><br>Risk that natural hazards pose to Otago's communities are minimised                                                                                                                                                                         | Whilst it is noted there is a natural hazard risk associated with the site which is low, this still requires minimising. This is achieved through the use of minimum floor levels.<br><br>As such, I consider the proposal is consistent with this Objective.                                |
| <b>Policy 3.8.3 Managing fragmentation of rural land</b><br>Manage subdivision, use and development of rural land, to:<br>a) Avoid development or fragmentation of land which undermines or forecloses the potential of rural land:<br>i. For primary production... | Whilst the proposal will result in a change in land use, this will not undermine or foreclose the potential use of the land for primary production.<br><br>I therefore consider the proposal to be consistent with this policy                                                               |

- [97] As such, the proposal is considered to be consistent with the relevant objectives and policies of the Operative and Proposed Regional Policy Statements.

## **10 DECISION MAKING FRAMEWORK**

### **10.1 Part 2 Matters**

- [98] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Furthermore, the matters of national importance in section 6 must be recognised and provided for, and particular regard must be had to the matters listed in section 7.
- [99] Of particular relevance to this application are sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", 7(c) "the maintenance and enhancement of amenity values" and 7(f) "the maintenance and enhancement of the quality of the environment".
- [100] As discussed in the assessment of effects above, the proposed development is not considered to create adverse effects on the environment that are more than minor when considered in the context of the receiving environment and the provisions of the Operative District Plan as they relate to Rural Zones. In particular the fact that two dwellings already have consent to establish on the site further reinforces this fact.
- [101] I therefore consider that the proposal will avoid, remedy or mitigate adverse effects to a degree that satisfies the provisions of the Operative District Plan. Whilst the proposal is contrary to the provisions of the Proposed District Plan, I do not consider these provision carry sufficient weight at this time to refuse consent. When considering the proposal overall the proposed development is consistent with the purpose of the Act outlined in section 5 of that legislation.
- [102] Having regard to section 6 of the Act, there are no matters of national importance which can be considered to be affected by the development of this site.
- [103] Having regard to section 7(c) the proposal will maintain the amenity values of the Rural Zone as anticipated by the Operative District Plan and maintain the quality of the Rural Zone in question.
- [104] Overall, I consider the proposal is consistent with those matters outlined in Part 2 of the Act.

### **10.2 Section 104D**

- [105] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [106] Overall I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore the first 'gateway' test of section 104D is met.
- [107] Only one of the two tests outlined by section 104D need be met in order for Council to be able to assess the application under section 104(1)(a) of the Act. In order for a proposal to fail the second test of section 104D, it needs to be contrary to the objectives and policies of the District Plan. In order to be

deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being not inconsistent with the relevant objectives and policies of the Operative District Plan, particularly those for the Rural Zone. As discussed above the proposal finds less support from the provisions of the Proposed Plan and is contrary to the Proposed District Plan. The proposal therefore fails the second 'gateway' test outlined by section 104D.

- [108] In summary, the application passes one of the threshold tests in section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with section 104(1)(a) of the Act. In turn, consideration can therefore be given to the granting of the consent.

### **10.3 Section 104**

- [109] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [110] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to the Rural Zone, Transportation and Natural Hazards Sections of the Operative District Plan. The proposal is contrary to a number of objectives and policies of the Proposed District Plan.
- [111] Regarding the position of weighting of the relevant plans the following points are worthy of consideration. Firstly, the Proposed District Plan is subject to submissions on the minimum lot size in the Rural Taieri Zone and these have not yet been heard. Secondly, whilst the rule has immediate legal effect, I note that without the rule having immediate legal effect the proposal still would have required an assessment of the relevant objectives and policies of the Proposed District Plan (which too could change). However due to the activity status under the Proposed District Plan, the activity must also first pass the Section 104D test.
- [112] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago, in particular Policy 11.5.3. of the Operative RPS, and Objective 3.2 and Policy 3.8.3 of the Proposed RPS.
- [113] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [114] Case law has suggested that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.
- [115] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Operative District Plan given the status of the subdivision as a Restricted Discretionary Activity, (under the Operative District Plan), the fact that resource consent exists for two dwellings on the subject site and the proposal seeks to subdivide 2 existing CFRs.

- [116] Certainly the proposal does represent a challenge to the Proposed District Plan however given the little weight that can be afforded to the provisions of the Proposed District Plan I consider the proposal, which is essentially a fairly standard rural subdivision in terms of the Operative District Plan does not qualify as a 'true exception' in terms of the Proposed District Plan. However the provisions of the Proposed District Plan are far from being finalised in the form of decisions on submissions being made and appeals resolved therefore 'what' the proposal is a true exception 'to' is yet to be determined.
- [117] Until the Proposed District Plan becomes operative I consider that the potential approval of the proposal would be unlikely to undermine public confidence in the Proposed District Plan's provisions.
- [118] Conversely, refusal of the proposal on the basis of the provisions of the Proposed District Plan at this stage would certainly undermine public confidence in the Operative District Plan's provisions.
- [119] Whilst approval of the proposal is raised in the submission of the ORC as setting a 'dangerous' precedent. I do not consider this to be the case. Certainly, in the short term, until the Proposed Plan becomes operative, there will no doubt continue to be applications such as this, and others that challenge the general intent of the Proposed District Plan. Once the Proposed Plan becomes operative, previous decisions made subject to the provisions of both plans, cannot be properly be regarded as a precedent given the statutory documents under which they were considered were considerably different and furthermore the objectives and policies of the Operative District Plan the proposal currently finds favour from, may carry less weight, or will no longer be in existence and available to be assessed.
- [120] For the above reasons, I consider that approval of the proposal will not undermine the integrity of either the Operative or Proposed District Plan as the activity will produce only localised and minor effects, if any. I therefore do not consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.

#### **10.4 Conclusion**

- [121] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions.

### **11 RECOMMENDATION:**

#### **SUBDIVISION (SUB: 2016-34)**

*Pursuant to section 34A(1) and 104B and after having regard to Part 2 matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council grants consent to subdivide Part Section 5-6 Block III East Taieri Survey District, held in CFR OTB1/698 and Lot 1 Deposited Plan 10269 into two lots, subject to conditions below, imposed under sections 108 and 220 of the Act.*

- 1. That the proposal shall be undertaken in general accordance with the application and in particular the scheme plan prepared by Paterson Pitts Partners Limited and the relevant details and information submitted with resource consent application, SUB-2016-34 received by Council on 10 May 2016; except where modified by the following conditions:*
- 2. Prior to certification of the cadastral dataset pursuant to section 223 of the Resource Management Act 1991, the subdivider shall ensure the following:*

- a) *If a requirement for any easements for services, including private drainage, is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the cadastral dataset.*
- b) *The Proposed ROW Easements "A" and "C" shown on the scheme plan shall be duly reserved and granted and shown in a Memorandum of Easements on the cadastral dataset*
- 3. *Prior to certification pursuant to section 224(c) of the Resource Management Act, the subdivider shall complete the following:*
  - a) *The proposed vehicle access to the site shall be hard surfaced and adequately drained from the edge of the carriageway of Riccarton Road West to a distance of not less than 5.0 metres inside the property boundary upgraded to a 5.0 metre formed width.*
  - b) *That a consent notice shall be prepared for registration on the CFRS of new Lots 1 and 2 for the following on-going conditions:*
    - 1. *The minimum formed width of vehicular access to the dwelling shall not be less than four metres wide and have a vertical clearance of no less than four metres high to ensure New Zealand Fire Service appliances have sufficient vehicular access to the property.*
    - 2. *The proposed dwelling must be provided with an adequate fire fighting water supply in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk.*
    - 3. *Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.*
    - 4. *Any vehicle access or hardstand located on the site shall not divert overland stormwater flows onto adjacent properties.*

#### **ADVICE NOTES:**

- 1. Should vehicle access works need to be undertaken within the legal road corridor, it should be advised the vehicle crossing is within legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation).
- 2. It is advised a formal agreement be drawn up between the owners of all private accesses in order to clarify their maintenance responsibilities.
- 3. The attention of the consent holder is drawn to the conditions of LUC-2015-577, in particularly those regarding the building platforms and minimum floor levels.
- 4. In addition to the conditions of a resource consent, the Resource Management Act establishes through Section 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effects created from an activity they undertake. A similar responsibility exists under the Health Act 1956.
- 5. Under the Historic Places Act (1993) an archaeological site is defined as a place associated with pre-1900 human activity where there may be evidence relating to the history of New Zealand. For pre-contact Maori sites this evidence may be in the form of bones, shells, charcoal, stones etc. In later sites of European/Chinese origin, artefacts such as bottle glass, crockery etc. may be

found, or evidence of old foundations, wells, drains or similar structures. Burials/koiwi tangata may be found from any historic period.

In the event of an "accidental discovery" of archaeological material, the following steps are to be taken:

All activity affecting the immediate area shall cease and the Regional Archaeologist of the Historic Places Trust will be notified.

Steps shall be taken to secure the site and ensure that archaeological matter remains undisturbed.

Works at the site area shall not recommence until an archaeological assessment has been made and archaeological material has been dealt with appropriately.

If any archaeological remains or sites of interest to Maori are identified, no further modification of those remains shall occur until the Trust Regional Archaeologist and Tangata Whenua have been consulted and an appropriate response advised.

For burials/koiwi tangata, steps 1 to 4 above shall be taken and the Regional Archaeologist of the Historic Places Trust, the New Zealand Police and the Iwi representative for the area contacted immediately.

An archaeological authority from the Trust may be required before work can proceed.

Contact details for the Regional Archaeologist for Otago/Southland are:

Dr Matthew Schmidt  
Regional Archaeologist Otago/Southland  
NZ Historic Places Trust  
PO Box 5467  
Dunedin  
Ph. +64 3 470 2364, mobile 027 240 8715  
Fax. +64 3 4773893  
mschmidt@historic.org.nz

If Dr Matthew Schmidt is not contactable, please try:

Bev Parslow, Senior Archaeologist, 04 470 8055; or

Kiri Petersen, Archaeologist, 04 470 8063

6. For more information on how to comply with Condition 3(b) above or on how to provide for NZFS operational requirements refer to the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008 retrieved from [http://www3.fire.org.nz/CMS\\_media/pdf/da516e706c1bc49d4440cc1e83f09964.pdf](http://www3.fire.org.nz/CMS_media/pdf/da516e706c1bc49d4440cc1e83f09964.pdf). In particular, the following should be noted:

For more information on suction sources see Appendix B, SNZ PAS 4509:2008, Section B2.

For more information on flooded sources see Appendix B, SNZ PAS 4509:2008, Section B3.

The reserve capacities and flow rates stipulated in the above conditions are relevant only for single-family dwellings. In the event that any proposed dwelling provides for more than single-family occupation then the consent

holder should consult with the NZFS as larger capacities and flow rates may be required.

## 12 REASONS FOR RECOMMENDATION

- [122] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor. Of particular relevance is the fact that resource consent has been granted for two dwellings on the subject site.
- [123] The proposal is considered to be consistent with the key relevant objectives and policies of the Operative District Plan.
- [124] The proposal is considered to be contrary with the key relevant objectives and policies of the Proposed District Plan.
- [125] The proposal is considered to be consistent with the relevant objectives and policies of the Regional Policy Statement for Otago.
- [126] It is noted the proposal failed the gateway test on account of being contrary to the objectives and policies of the Proposed District Plan.
- [127] Clearly the proposal does not find support from the objectives and policies of the Proposed District Plan. At this stage in the plan process, I consider that little weight can be given to the provisions of the Proposed District Plan due to the fact that submissions are yet to be heard or decisions on submissions made, and certainly not enough weight to warrant refusal of consent.
- [128] I consider significantly more weight should be afforded the provisions of the Operative District Plan.
- [129] I consider the proposal, which is essentially a fairly standard rural subdivision in terms of the Operative District Plan does not qualify as a 'true exception' in terms of the Proposed District Plan. However the provisions of the Proposed District Plan are far from being finalised in the form of decisions on submissions being made and appeals resolved therefore 'what' the proposal is a true exception 'to' is yet to be determined. For this reason I also consider the proposal will not set a precedent.
- [130] The proposal is considered to be consistent with the Part 2 matters of the Resource Management Act 1991.
- [131] I therefore recommend that resource consent be granted, subject to recommended conditions of consent.

Report prepared by:



Shane Roberts  
**Consultant Planner**

28 July 2016

Report checked by:



Kirstyn Lindsay  
**Senior Planner**

28 July 2016