

Report

TO: Hearings Committee

FROM: Lianne Darby, Planner

DATE: 28 October 2016

SUBJECT: **RESOURCE CONSENT APPLICATION**
SUBDIVISION: SUB-2016-84
LAND USE: LUC-2016-430
111A CLIFFS ROAD
DUNEDIN

1. INTRODUCTION

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

2. DESCRIPTION OF ACTIVITY

- [2] The applicants have applied to subdivide their property at 111A Cliffs Road into two residential properties. The subject site is legally described as Lot 1 Deposited Plan 25450, held in Computer Freehold Register OT17C/223, and has an area of 2029m². The site is more or less rectangular in shape, and is situated at the top end of a shared access from Cliffs Road. There is an existing dwelling on-site positioned on the northwest half of the property. The southwest corner of the property is subject to a right of way and services easement in favour of 111B and 111E Cliffs Road.
- [3] All access to the subject site is via the shared accessway. The majority of the access way is privately owned and known informally as 'Lyders Road' in recognition of the land owner who created the right of way in 1922. The right of way extends for approximately 360m between Cliffs Road and the unformed Isadore Road at its southwest end. It is formed and sealed to a width of approximately 4.0m from the edge of the carriageway of Cliffs Road to the junction of the first driveway, a distance of approximately 25m, almost all contained within the Cliffs Road legal road reserve. Thereafter, Lyders Road is formed to a width of approximately 3.0m, and is metalled.
- [4] Lyders Road has an acute angle approximately 330m from Cliffs Road. At this point, the formed access cuts the corner and crosses outside the legal right of way and into the neighbouring property, 101A Cliffs Road, owned by Mr and Mrs Small. There is no right of way easement over this section of access. Despite 'owning' part of the access, 101A Cliffs Road has no legal right to use the balance of Lyders Road.
- [5] Currently, Lyders Road is legally described as Lot 6 Deposited Plan 424179. It is held in Computer Freehold Register 610647, along with Lot 5 DP 462608 (2F Clayton Street) and a 1/15th share of Lot 17 DP 424179 (Adams Way).
- [6] At the top end of Lyders Road, the access crosses into the road reserve of the unformed section of Isadore Road. Isadore Road is formed to road standard up to the intersection of Highgrove and Clayton Street, but then is unformed for approximately 160m over relatively steeply sloping ground. At this point, Lyders Road cuts into the

legal road corridor and follows its alignment for approximately 45m before swinging outside of the road boundaries again. Within this section, the access splits. The right fork continues along the legal road definition to 111F and 111G Cliffs Road. The left fork crosses back out of Isadore Road onto a small triangular parcel legally described as Part Section 1 Block XIII Survey Office Plan 6 Dunedin and East Taieri Survey District. This 212m² parcel is shown on Council records as being owned by eight properties, plus three new sites consented but not subdivided, being the users of the access beyond this point. The applicants own a 1/10th share of this land, held in Computer Freehold Register OT14D/86.

- [7] Above the triangular parcel, the access is contained within 111 Cliffs Road, owned by Mr and Mrs Horne. It follows a relatively sharp right-hand bend with limited visibility. The driveway to 111A and 111E Cliffs Road exits to the left at this point. The access straightens again and continues for approximately 110m within 111 Cliffs Road.
- [8] In total, the length of the access from roadside boundary at Cliffs Road to the boundary of the subject site is approximately 525m. It serves as vehicular access to eleven properties, not all of them developed with residential dwellings, plus one informal access arrangement to 9 Highgrove and four consented sections yet to be created. In addition, there are access rights associated with one or two of the Clayton Road properties although it is unlikely that these will utilise the road for vehicular access. At least one has pedestrian rights of way only.
- [9] The proposed subdivision of 111A Cliffs Road will create two new sites. Proposed Lot 1 will be a site of 1017m² containing the existing dwelling, and proposed Lot 2 will be a vacant site of 1015m² suitable for development with a single dwelling. Lot 1 will utilise the existing access, while Lot 2 will make use of an existing right of way over 109 Cliffs Road to form a new access, most likely at the northwest corner of the new lot.
- [10] Both new lots will use Lyders Road. As the proposal will increase the traffic on this access, the applicant proposes upgrading a 40m section of the access between the chainage of 160m and 200m from Cliffs Road. This section has been chosen because of the existing consent SUB-2013-17, issued 4 September 2013, for 109 Cliffs Road. SUB-2013-17 will allow 109 Cliffs Road to be subdivided into four residential lots, and as part of that decision, required the first 160m of Lyders Road to be upgraded. The applicant for this consent therefore intends to extend that upgrading on a proportional basis for the number of lots being created, starting from where SUB-2013-17 finishes. The proposal is to widen the access up to 5.0m where possible, and to have a chip seal surfaced with an asphalt dish channel.
- [11] A copy of the application is included as Appendix A of this report.

3. ACTIVITY STATUS

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

The Dunedin City District Plan.

- [15] The subject site is zoned **Residential 1** in the Dunedin City District Plan. It is located within the **Restricted Water Supply Area**, and is within the urban landscape conservation area **ULCA21 – Upper St Clair, Dunedin**. There are no hazards shown for this land on the Hazards Register, and no other designations applicable to this application.
- [16] Rule 18.5.1(ii) allows subdivision in the Residential zones as a restricted discretionary activity where the application complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12, and each site complies with minimum area and frontage requirements of the relevant zone. Both lots of the proposed subdivision will comply with the minimum area requirement for the Residential 1 zone, but neither will have frontage to legal road. Accordingly, the proposed subdivision is considered to be a **non-complying** activity pursuant to Rule 18.5.2.
- [17] Rule 8.7.1(i) lists residential activity at a density of not less than 500m² per residential unit as being a permitted activity for this zone, provided that an existing residential unit may be erected on an existing site of any size. However, Rule 8.7.4(ii) lists multi-unit residential activity at a density of not less than 500m² of site area per residential area in the restricted water supply area as a restricted discretionary activity. Although the subject site is located within a restricted water supply area, the lots will become existing sites on subdivision, thereby allowing a dwelling to be established on each new lot as a permitted activity pursuant to Rule 8.7.1(i).
- [18] The proposed residential activity for Lots 1 to 4 is therefore a permitted activity subject to compliance with the performance criteria of Rule 8.7.2. The proposal will fail to comply with the following:
- Rule 8.7.2(viii) requires access to comply with the Transportation Section of the District Plan.
 - Rule 20.5.7(iv)(c) requires the full length of any private way that serves two or more units shall be hard surfaced. The access will not be hard surfaced for its entire length.
 - Rule 20.5.7(iv)(g) specifies that private ways may provide vehicle access to a maximum of twelve residential units. Lyders Road will serve as vehicle access to at least 17 (existing, permitted or consented) residential units.
 - Rule 20.5.7(v)(b) specifies that the minimum width of a private way serving 7 to 12 residential units shall be formed to a minimum width of 5.0m; serving 4 to 6 residential units, 4.5m; and 1 to 3 residential units, 3.0m. Lyders Road is between 3m and 4m wide over its entire length, therefore being under-width for much of its length.
- [19] The existing and proposed residential activity of proposed Lots 1 and 2 will be a **restricted discretionary** activity pursuant to Rule 8.7.4(i).
- [20] There is no specific building proposal for Lot 2, and as such, this consent does not assess the future development for this lot. However, as it is situated within the ULCA21, it is subject to Rule 13.8.1(i) which requires the erection of any structure more than 20m² in area or 5m in height in urban landscape conservation areas is a controlled activity.

The Proposed Plan

- [21] The site is zoned **General Residential 1** in the Proposed Plan and is within urban conservation area **UCA21**.

Subdivision Activity:

- [22] Rule 15.3.5.3 specifies that general subdivision is a restricted discretionary activity in the Residential zones, subject to compliance with the performance criteria. Rule 15.7.1 requires subdivision to comply for access with Rule 6.8.1. The access to proposed Lots 1 and 2 will fail to comply with the following:
- Rule 6.8.1 requires access to comply with Rule 6.6.3.
 - Rule 6.6.3.6(b) requires the full length of any shared driveway, except those in the rural and rural residential zones, to be hard surfaced. Lyders Road is not hard surfaced except for the section next to Cliffs Road. Should subdivision consent SUB-2013-17 and/or SUB-2015-96 be give effect prior to this consent, a greater length of up to 160m of Lyders Road will be hard surfaced, but not the entire length.

The subdivision is considered to be a restricted discretionary activity pursuant to Rule 15.3.2.14.

- [23] Under the Proposed Plan, activities have both a land use activity and a development activity component.

Land Use Activity:

- [24] Rule 15.3.3.3 specifies that residential activity is permitted in the Residential zones, subject to the performance standards. On the basis of information available, the existing and proposed residential activities of proposed Lots 1 and 2 are compliant with the performance standards, and are considered to be a permitted activity pursuant to Rule 15.3.3.3.

Development Activity:

- [25] Rule 15.3.4.3 specifies that a new building smaller than 300m² is permitted in the Residential zones zone, subject to the performance criteria. The future development for proposed Lot 2 will be assessed at the time of building consent or resource consent application. There is no development proposed for Lot 2, and no implications for the existing development from the proposed placement of the new boundary. On the basis of information available, the proposal is considered to be a permitted activity pursuant to Rule 15.3.4.3.

Overall Proposed Plan Status:

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

Summary

- [27] The application was lodged on 14 September 2016, after the close of submissions on the Proposed Plan. The Residential zone rules are subject to submissions and could change as a result of the subdivision process. Accordingly, the Proposed Plan rule provisions are not relevant to the activity status of the application.
- [28] The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan, and is considered to be a **non-complying** activity. The activity status of the land use activity is also determined by the Dunedin City District Plan, and is considered to be a **restricted discretionary** activity.
- [29] At the time of assessing this subdivision and land use application, none of the relevant Proposed Plan rules have been given effect or made operative. The relevant provisions are subject to submissions and could change as a consequence of the submission

process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision and land use application.

NES Soil Contamination Considerations:

- [30] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [31] Comment was sought from the applicant regarding the possibility of contamination of soils on the subject sites and the application of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health' (NES). Under Clause 6(2) of the NES the applicant can rely on the most up-to date Council information to determine whether a Hazardous Activities and Industries List (HAIL) activity has taken place on the site rather than a Preliminary Site Assessment.
- [32] The applicant's agent has had a search of Dunedin City Council records undertaken (HAIL-2016-93) in order to determine whether or not the NES is likely to be relevant, as provided for by Regulation 6 of the NES. The search of Council records has not identified any use of the land by a HAIL activity. On the basis of the information received, the applicant's agent comments:

'The DCC HAIL report for 111A Cliffs Road has confirmed that there have been no known HAIL activities undertaken on the site in the past and therefore, we consider that the risk of harm to human health as a result of the subdivision is minimal if any. We are awaiting the ORC Hail search results and will make these available as soon as they have been received to reaffirm the above. We however do not envisage the ORC identifying any HAIL activities as having been conducted on site in the past.'

4. WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

- [33] The written approvals of the people detailed in the table below have been obtained. In accordance with section 104(3) of the Resource Management Act, the Council cannot have regard to the effects of the activity on these persons.

Person	Owner	Occupier	Address	Obtained
David Collett	✓	✓	111C Cliffs Road	12 September 2016
Richard and Rachel Roe	✓	✓	111A Cliffs Road	12 September 2016
Cargill's Castle Trust Incorporated	✓	✓	111D Cliffs Road	8 August 2016
Cory Richards & Emily Wheeldon	✓		111G Cliffs Road	13 September 2016
Marcelle Dawson & Steven Jackson	✓	✓	105 Cliffs Road	13 September 2016

- [34] Not all legal users and owners of the access provided written consent, so the application was limited notified and the remaining neighbours contacted. Copies of the application were sent to the following parties with submissions closing on 21 October 2016:

- Mr and Mrs Small: 101A Cliffs Road (owners of part of the access where it cuts the acute corner, but having no legal rights to use the balance of the access);
- Mr and Mrs Stewart: 107 Cliffs Road;
- Mr Black: 107 Cliffs Road;
- Mr Fogherty: 113 Cliffs Road;
- Mr and Mrs Spitzer: 111B Cliffs Road;
- Mr Foster: owner of Lyders Road;
- Ms Gerold, and Mr Winant: 111E Cliffs Road;
- Mr and Mrs Horne: 111 Cliffs Road; and
- Mr and Mrs O’Kane: 111F Cliffs Road

[35] Four submissions have been received. Two submissions oppose the application, one is neutral in its stance, and one does not specify. The submissions are summarised in the table below, and a copy of the submission is attached in Appendix C.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Peter John Foster	Oppose	▪ Mr and Mrs Foster own Lyders Road. ▪ Refers to section 6.11 of the application. ▪ Agrees with matters set out: 1. Upgrade the access to a compliant standard. 2. The need for the access easement to be complied with (shortcut over 101A Cliffs Road). 3. The vehicle access at Cliffs Road not meeting both international and NZTA standards. ▪ Requests the access be upgraded, preferably with all users making a contribution. ▪ Requests that the access to Cliffs Road be made compliant, and perhaps in accord with previous suggestions and plans.	Yes
Doree Johanna Gerold	Not stated	▪ Submitter does not believe that Lyders Road can handle additional traffic without a serious upgrade and capacity increase. ▪ Until this issue is adequately addressed, submitter opposes any further subdivision. ▪ Requests that the application be rejected.	Yes
Andrew & Judith Stewart	Opposed	▪ Submitters object strongly to any further development increasing use of private access, Lyders Lane. ▪ Non-complying activity, fails both limbs of the s104D gateway test of RMA. ▪ Environmental effects more than minor. Application should have been publically notified. ▪ Capacity of Lyders Lane already exceeded. ▪ Significant safety and amenity effects which should not occur in a residential suburb. ▪ Road is not a public road, and dwellings are not serviced by the Council to the	Not stated

		standard one would expect in a suburban area. ▪ Significant amenity effects for submitters e.g. rubbish collection is near submitter's property; often have to clean up mess after rubbish being left for collection. Significant impact on amenity, not appropriate in suburban areas. ▪ Contrary to key policies of Residential, Subdivision and Transportation sections of District Plan – amenity values, safety and efficiency of the transport network, infrastructure capacity and the physical constraints to subdivision. ▪ Proposed does not promote the sustainable management of natural and physical resources; should be declined. ▪ Comments that application incorrect regarding communications with Terramark. ▪ Agreed reluctantly to previous subdivisions (109 & 113 Cliffs Road) subject to strict conditions re:upgrading of road. Have yet to see upgrades and impacts of four extra houses. Until this happens, submitters strongly oppose any further development. As first residence on road, their property has full impact of every vehicle. ▪ Have concerns about potential number of consents to subdivide other land. Granting consent sets precedent. ▪ If consent granted, will owners seek to subdivide again? ▪ No consideration given to traffic for Cargill's Castle generation in future. Road cannot accommodate traffic for popular tourist attraction. ▪ Considers that Council or developers must consider opening up access from Isadore Road, particularly given uncertainty around Cargill's Castle.	
Mark Anthony O'Kane Supported by: AR & KJ Heathman	Neutral	▪ Rules breached – hard surfacing of road, number of road users, and road not formed to 5.0m. ▪ No maintenance agreement in place. ▪ The vehicle entry from Cliffs Road is not meeting transport standards. ▪ Would like to see the road significantly upgraded, including Council hard surfacing the section of Isadore Road. ▪ Submitter pays high rates to live there, and Council needs to be responsible for the section of road that it does not currently maintain. ▪ Believes there will undoubtedly be future subdivision, and submitter believes it is time Isadore Road should be fully developed to accommodate this usage. ▪ Requests that subdivision be granted provided: - Entry from Cliffs Road modified to suit extra road users. - The road is significantly upgraded including passing bays. - The section of legal road (Isadore Road) is sealed.	Mr Heathman to speak on Mr O'Kane's behalf.

- [36] The Council does not consider Mr and Mrs Heathman to be affected parties to this proposal. Although 9 Highgrove has a formed entrance onto the access at Isadore Road, and notwithstanding the previous informal use of 9 Highgrove as alternative access to the Cliffs Road properties, there is no legal right for Mr and Mrs Heathman to use Lyders Road. As the issues for this proposal are in relation to the access formation standards, I consider only those parties with access rights to be potentially affected.

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [37] 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-

*Any positive or adverse effect; and
Any temporary or permanent effect; and
Any past, present, or future effect; and
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 -
Any potential effect of high probability; and
Any potential effect of low probability which has a high potential impact.*

- [38] 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.
- [39] While subdivision always requires resource consent and therefore no permitted baseline applies, the fact is many subdivisions are in accordance with the expectations of the District Plan for the zone. In such cases, the subdivision itself does not create any real challenges for the District Plan, and the purpose of the subdivision consent is to ensure that the necessary works are undertaken to provide physical and legal access, and servicing, to the new lots. Unless a proposed subdivision will create new sites which are deficient for access or servicing, or will increase the density of development for the zone to an unacceptable level, or does not satisfy the provisions of section 106 of the Resource Management Act 1991 regarding access, risk of inundation from any source, and/or geotechnical risks, Council will not normally decline a consent proposal. Nor does the Council require the written consent of neighbours. Although not a permitted activity, a property owner is usually entitled to subdivide their land in accordance with the zone expectations.
- [40] The Residential 1 zone rules allow at least one dwelling to be constructed on each lot subject to compliance with the performance criteria of Rule 8.7.2. Although resource consent is required for a dwelling on new Lot 2 under the urban landscape conservation rules, such an activity is a controlled activity in regard to the design and appearance of the building only. The appropriateness of using this land for residential activity is not questioned.
- [41] In this case, the proposed subdivision and residential use of the subject site does not create any issues for the administration of the District Plan. The Committee's consideration is largely limited to the increased use and standard of the access. As part of that assessment, the Committee needs to keep in mind the historic background to the access, the number of existing users and the question of shared obligations, and the access rights given by the Property Law Act 2007 for all properties with right of way easements.

- [42] In addition, the different status of the access within the Isadore Road legal corridor should be recognised. At Isadore Road, the access is considered to be a private driveway within legal road reserve, and Council does not maintain this section of the access. Nor do the District Plan standards strictly apply to this section of access, particularly where the rules are specific to private ways. The access has been formed within Isadore Road, and to a comparable standard, since 1947 at least (judging from aerial photographs). It is quite possible that this access has been in place since the occupation of Cargill's Castle in its heyday (1880s). As it is on legal road, all persons are entitled to pass over this section of the access. Effects, such as dust and noise, are considered to be part of the permitted baseline.
- [43] The assessment of effects is guided by the assessment matters in sections 8.13 and 18.6.1 of the District Plan. Although the Committee's discretion is largely limited to an assessment of the access, this report will serve as the subdivision report for any subdivision consent granted and, as such, the assessment will address the following matters:

Lot Size and Dimensions;
 Easements;
 Transportation;
 Infrastructure;
 Hazards;
 Earthworks;
 Landscape;
 Amenity Values and Character;
 Construction Effects;
 Cumulative Effects;
 Sustainability.

Lot Size and Dimensions (18.6.1(q)) and Physical Limitations (18.6.1(k))

- [44] The proposed subdivision will create two new lots of 1017m² and 1015m². These lots are large enough for two residential dwellings to be built on each under the Residential 1 zone density provisions which sets density at not less than 500m² per residential unit. Although the Restricted Water Supply designation for this area limits the development of a site to one residential unit per site, and therefore the proposed subdivision could be said to be creating an additional house site over and above that anticipated by the District Plan, the water supply issues leading to this designation has been addressed by Council, making the designation irrelevant. It has been lifted from the Proposed Plan maps. There is therefore no District Plan expectation that development of the subject site, or the new lots, will be limited to one house.
- [45] Neither of the proposed lots will have frontage to legal road, and accordingly, the subdivision proposal is considered to be a non-complying activity. In most cases, the lack of frontage to legal road is considered to be a technicality as adequate legal access is provided through rights of way. 111A Cliffs Road has adequate legal access, and in this regard, the subdivision will not create any challenges. The issue, in this case, is the standard of formed access within that legal access corridor.
- [46] Proposed Lot 1 has an established residential dwelling. Lot 2 is considered to be of practicable size and shape to accommodate a residential activity. There are no known geotechnical issues which are expected to compromise the development of the new vacant site. Accordingly, there is no expectation that the proposed subdivision will create any lot having physical limitations rendering it unsuitable for future use.

Easements (18.6.1(i))

- [47] There are a number of existing easements registered on the title of the subject site. The first is a right of way created in 1922 by **Transfer 81253**. This easement covers

the section of access between Cliffs Road and Isadore Road, known informally as Lyders Road. Legal access over this right of way was given to approximately 10ha of land including (but not limited to) what is now the subject site and the neighbouring properties 111A to 111G Cliffs Road and 19A to 19E Highgrove. The right of way easement was surrendered by the Highgrove properties in 2010 as part of that subdivision. The easement remains relevant to the Cliffs Road properties including the subject site, and provides them with all the access rights necessary for the use of Lyders Road.

- [48] There are no easements over the legal road, Isadore Road, and none are necessary. The small triangle of land next to Isadore Road is owned by multiple parties in shares, and serves purely as access. The owners of the subject site own a 1/10th share of this triangle. This share will become two undivided 1/20th shares for Lots 1 and 2 of this subdivision.
- [49] Rights of way were created in 1958 by **Transfer 207261** over what is now 109 and 111 Cliffs Road in favour of Lot 4 DP 9130. The subject land is part of Lot 4 DP 9130, and as such, the subject site has right of way over the existing access within 111 Cliffs Road and across the corner of 109 Cliffs Road. Should consent be granted, this easement will carry down in favour of both new lots.
- [50] In 1996, when the subject site was created by DP 25450, there were easements created by Easement Certificate **914878.4** for right of way, sewage, the conveyance of water, electricity, and telecommunications over the subject site in favour of 111E Cliffs Road. These all relate to Easement A, a narrow triangle of land in the southwest corner of the subject site. This will be contained within proposed Lot 2 on subdivision. The applicant plan shows these easements to also be in favour of 111B Cliffs Road, but this does not appear to be the case from the registrations on the title. My understanding is that the actual easements for 111B Cliffs Road pass along the western and southern boundaries of the subject site, but not into the subject site itself.
- [51] The application plan shows three proposed easements, all over land outside of the subdivision proposal. The first is Easement A over the land of 111 Cliffs Road for the services in favour of both proposed Lots 1 and 2. As the existing house presumably utilises these services already, the easement will be merely formalising the existing situation. There is no dwelling on proposed Lot 2, however, so the servicing of this new property will be dependent on the agreement of the owners of 111 Cliffs Road.
- [52] The situation is similar in respect of services over 109 Cliffs Road. Both proposed Lots 1 and 2 are to be given water, power and telecommunication easement through this neighbouring property, with Lot 2 also being given rights for the drainage of foul sewage and stormwater. The owners and occupiers of 109 Cliffs Road have provided affected party approval for the subdivision, and presumably have no issues with the creation of the new easement. I note that 109 Cliffs Road is, itself, to be subdivided, and the land of the proposed easement may pass into different ownership before this subdivision is given effect should consent be granted. As such, this easement should be created before the change in ownership occurs, or it is possible that the new owners will not consent to the proposed services easement in favour of proposed Lots 1 and 2. If it is created as part of the subdivision of 109 Cliffs Road, this situation will not arise.
- [53] Further service easements are not necessary once the services pass through the triangular parcel of Part Section 1 DP 987, as this site is held in part ownership by the applicant, and Isadore Road, as this is legal road. Council services are available within Isadore Road.
- [54] There is a short section of Lyders Road where the access formation passes outside of the legal extent of the rights of way and into the property of 101A Cliffs Road. There

are no legal rights for any of the properties to pass over this land. The situation is historical as the rights of way were created in 1922 and the encroachment is shown in an aerial photograph from 1947. It is possible that the rights of way never accurately depicted the alignment of the access. The owners of 101A Cliff Road, Mr and Mrs Small, submitted on the application SUB-2013-17, but have not submitted in respect of this proposal. Recognising that the applicant of SUB-2013-17 had no easement to pass over this section of Lyders Road, the consent of SUB-2013-17 was issued with the condition:

2. *That pursuant to section 116 of the Act, this consent shall not commence until lawful access is obtained over Part Section 32 DP 923 Ocean Beach Survey District (101A Cliffs Road), or the access is rerouted so as to avoid this property, or written consent is provided by the owners of this property allowing access to continue on an informal basis. Council shall be notified in writing of the new easement, the completion of physical works, or the agreement reached, according to which option is selected.*

- [55] As the same issues will apply to this subdivision proposal, it is my recommendation that a similar condition be imposed on any consent granted for this subdivision. This will either address the legal access for the subject site and the proposed lots, or will confirm that Mr and Mrs Small are agreeable to the present situation continuing. The applicant has identified this as a potential issue for the subdivision, and has requested that the same condition be imposed for the subdivision of 111A Cliffs Road.

Transportation (18.6.1(c))

- [56] Both new lots of the proposed subdivision will obtain access to Cliffs Road via the shared access. Users of the access are, currently:
- The applicants: 111A Cliffs Road;
 - Nine legal users: 105, 107, 109, 111, 111C, 111D, 111E, 111F, & 113 Cliffs Road;
 - Two legal users, no dwelling: 111B & 111G Cliffs Road;
 - One legal user, no access: 2F Clayton Street is held in the same title as Lyders Road and therefore has full rights of use but no means of obtaining vehicle access.
 - Four consented users, not yet created by subdivision: SUB-2013-17 will subdivide 109 Cliffs Road so as to create three additional users, and SUB-2015-96 will subdivide 113 Cliffs Road to create one additional user.
 - One informal user: 9 Highgrove.
- [57] To summarise, there are currently ten legal users obtaining vehicular access via the Lyders Road access. This includes Cargill's Castle (111D Cliffs Road) which creates limited traffic as it is not a residential property. There can be no assumptions about future use of this site, however. There are two vacant sites which are expected to be developed with a residential dwelling at some point in the future, but will require land use consent for construction in an urban landscape conservation area. These consents will not be declined. Subdivision consents for 109 and 113 Cliffs Road have been issued, and will create a total of four more users, but have not yet been given effect. 9 Highgrove has a formed access onto Isadore Road which this property can utilise, it being legal road, but it does not have legal access over Lyders Road. The primary (and legal) access for 9 Highgrove is directly to Highgrove. Finally, 2F Clayton Road is in the same title as Lyders Road and therefore has full rights but no practical vehicle access. There may also be Clayton Street properties with pedestrian rights of way over Lyders Road, although most (if not all) of such rights have been recently cancelled.
- [58] The proposed subdivision seeks to add another residential user to the access. This user will be near the top end of the shared access, and will utilise almost its full length. If all the current legal and consented users utilise the access, the new lot will

be the 17th user of the access. The District Plan anticipates a maximum of twelve users for a private way, so the use of Lyders Road and above already exceeds the maximum.

- [59] For this reason, the subdivisions of 109 and 113 Cliffs Road were processed on a limited notified basis in order to provide the other users of the access the opportunity to comment. When assessing the subdivision of 109 Cliffs Road, it was only the first 100m or so of the access, measured from Cliffs Road, which would have more than twelve users. 113 Cliffs Road is located within 100m of Cliffs Road, so it was the same section of Lyders Road under discussion during the processing of SUB-2015-96. However, in the case of this subdivision proposal, it will be proposed Lot 2 that becomes the twelfth user (assuming the other subdivisions are given effect), so the full length of Lyders Road and part of the right of way over 111 Cliffs Road to the new lot which needs to be considered. Where the access falls within the legal extent of Isadore Road, there is no District Plan limit on the number of users and the discussion is, technically at least, irrelevant to this section of the access.
- [60] The subdivision consent for 109 Cliffs Road, SUB-2013-17, was issued with the following conditions regarding the upgrading of Lyders Road:

Access

- a) *That the intersection of Lyders Road and Cliffs road shall be upgraded so that there is at least 40m of sight distance for a driver along Cliffs Road in both directions, or an alternative distance that has been sufficiently justified and agreed to by the Transportation Operations Manager. Detailed engineering plans for this upgrade shall be submitted to the Transportation Operations Manager for approval prior to construction works commencing.*
- b) *That the shared private access shall be upgraded generally in accordance with the measures proposed in the application. The upgrades shall include the following:*
 - *The lower section of Lyders Road, starting from Cliffs Road and extending up to a distance 130m from the edge of the existing hard surfacing, shall be widened to a minimum of 5.0m where reasonably possible or, failing that, the maximum extent of any narrower width, and shall be hard surfaced over the full formation. The access shall be adequately drained.*
 - *The full length of the rest of the access, including the section on Isadore Road, shall be reshaped and resurfaced, and shall include adequate drainage provisions.*
 - *A passing bay shall be constructed on Lyders Road near the legal extension to Isadore Road. The profile of the passing bay shall be constructed in accordance with the relevant NZTA, Austroads, or other appropriate engineering guidelines as accepted by Transportation Operations.*
 - *Two traffic calming structures shall be installed, one above the vehicle entrances of 107 & 113 Cliffs Road.*
- c) *A Traffic Management Plan for the management of the access during upgrading works shall be submitted to the Transportation Operations Manager for approval prior to works being commenced.*
- d) *The access shall be managed in accordance with the approved Traffic Management Plan during the construction period of all upgrade works.*

- e) *All construction work on the site shall be designed and conducted to ensure that construction noise does not exceed the noise limits in the following table.*

<i>Time of Week</i>	<i>Time Period</i>	<i>Leq (dBA)</i>	<i>L max(dBA)</i>
<i>Weekdays</i>	<i>0730-1800</i>	<i>75</i>	<i>90</i>
	<i>1800-2000</i>	<i>70</i>	<i>85</i>
	<i>2000-0730</i>	<i>45</i>	<i>75</i>
<i>Saturdays</i>	<i>0730-1800</i>	<i>75</i>	<i>90</i>
	<i>1800-2000</i>	<i>45</i>	<i>75</i>
	<i>2000-0730</i>	<i>45</i>	<i>75</i>
<i>Sundays and public holidays</i>	<i>0730-1800</i>	<i>55</i>	<i>85</i>
	<i>1800-2000</i>	<i>45</i>	<i>75</i>

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. Please Note: the lower noise limits on Sundays and Public Holidays may mean that no construction work can occur on these days.

- [61] As the subdivision of 109 Cliffs Road has not progressed, this work has not been undertaken to date. However, I understand that Mr and Mrs Roe are still intending to proceed with their subdivision, and accordingly, the above conditions will be complied with before Council signs the section 224(c) certificate for that subdivision. The survey plan cannot deposit without this signature, and titles will not issue, so there is no danger of the subdivision proceeding without this work being done. While subdividers sometimes seek to bond access formation works (thereby delaying the works until after the issue of titles), it is my opinion that this would not be an appropriate action in this case. Such bonding is usually undertaken when the developer seeks to delay hard surfacing of an access until after houses are built on the new sites to minimise the risk of damage to the new seal. In this case, the access serves more than the site of 109 Cliffs Road, and more than one existing property has yet to be developed. There is therefore little real benefit in delaying the sealing until after the houses are built on the new lots of SUB-2013-17. The proposed upgrading of the access was also a key reason for the granting of the consent.
- [62] 113 Cliffs Road also has consent, SUB-2015-96, to subdivide. The consent was also processed on a limited notified basis, and the Committee granted consent on 3 May 2016. The Committee considered it appropriate that Mr Fogarty contribute to the upgrading of Lyders Road over the section used by 113 Cliffs Road, but realised that the consent of SUB-2013-17 already addressed this section. Even so, there was the possibility that SUB-2013-17 would not proceed. In order to ensure these works would be completed prior to the addition of any new properties on to the access, the Committee issued consent for SUB-2015-96 with the same conditions as above (limited only by removing those requirements applying to the section of Lyders Road above the entrance to 113 Cliffs Road). The Council has left it to Mr Fogarty and Mr and Mrs Roe to determine their respective contributions to the work and the timing of the subdivisions.
- [63] Several residents of the Cliff Road properties have spoken with me and expressed dissatisfaction that Council is granting consent for subdivisions on the basis of Lyders Road being upgraded, but nothing has been done to the road. To date, there have been no upgrading works undertaken. Nor has there been any subdivision. Without going into detail as to how subdivision certifications work, it is possible that the new titles for these subdivisions will not issue until 2021 (for SUB-2013-17) or 2024 (for SUB-2015-96). The key matter to realise is that the subdivision consents have a number of years yet before they lapse and the upgrading works could be some time away, but upgrading will be a requirement before the new titles are issued. The consent holders cannot subdivide without the works being completed.

- [64] Anticipating that the Council will require additional upgrading works for this subdivision to be granted consent, the applicant proposes to upgrade the next 40m of Lyders Road (between the chainages of 160m to 200m). This work will include the widening of the road where possible to 5.0m, and finishing the surface with chip seal and an asphalt dish channel. The applicant does not want to cut into the cliff on the northwest side of Lyders Road because of the steepness of the cliff and the presence of existing vegetation which is contributing to its stability. However, there is not necessarily sufficient space between the cliff and the southeast boundary of Lyders Road for a 5.0m wide access to be formed in all locations; hence the applicant anticipates that there might be problems in achieving a 5.0m width for the full 40m.
- [65] Should the Committee be of a mind to grant consent, it needs to consider whether the proposed upgrading works are appropriate, sufficient, and/or occurring in the best place. It is not considering whether or not the proposed lots should be allowed to use Lyders Road for access. The subject site has legal right of way over this access, and the Council cannot remove those rights unless they are redundant (i.e. serve no purpose and/or cannot be used). The rights are also in terms of the land and not the residential dwelling; accordingly, any number of houses on the land can take advantage of the rights given by the easement. The right of way easements are subject to Schedule 5 of the Property Law Act 2007 which provides for the following:

1. ***Right to pass and re-pass***

- (1) *The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.*
- (2) *That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.*
- (3) *In this clause, the grantee and the grantor include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.*

2. ***Right to establish and maintain driveway***

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) *the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and*
- (b) *any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and*
- (c) *the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and*
- (d) *the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and*
- (e) *the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.*

3. ***Right to have land restored after completion of work***

- (1) *This clause applies to a person bound by these covenants (person A) if a person entitled to enforce these covenants (person B) has undertaken work, in accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.*

- (2) *Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).*
- (3) *That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.*

- [66] The above legislation indicates that all the owners and users have a responsibility to maintain and/or contribute to the costs of maintenance of the shared access. Therefore, in regards to the subject access, all parties using Lyders Road and the upper section of the access (including that stretch over Isadore Road) share responsibility for the standard of the access. It is worth noting that the residents need not wait for a Council directive for works to be undertaken and any one of them can initiate the maintenance or upgrading of the access. As there are clearly concerns about the standard of the access amongst the residents, it is perhaps surprising that works have not been done already. The issue is undoubtedly the expense. Therefore, while there are those who object to the subdivision proposal on the basis that it will add more traffic to Lyders Road, it is the subdivisions of the existing properties which offer the best opportunities to have the access improved.
- [67] The Transport department of Council usually recommends that hard surfacing which is being completed in sections occur sequentially along an access or road so as to minimise the area subject to damage where hard surfacing meets gravel. To do this on Lyders Road will involve the upgrading of a 40m section in front of, and slightly above, 103 Cliffs Road. This property does not have legal or physical access onto Lyders Road, and as such, the owners and occupiers have not been given the opportunity to submit on this application. However, I note that the upgrading requirements of the other two subdivisions will hard surface the section of road in front of the house of 103 Cliffs Road, and the additional hard surfacing proposed by this consent will not be next to the house itself.
- [68] Those who benefit from the proposed hard surfacing of this section of Lyders Road will be the users at the upper end. Above the turn off to 113 Cliffs Road, there is approximately 270m before Lyders Road becomes Isadore Road, and a further 50m before the turn off to 111F Cliffs Road. Over this length of approximately 320m, there are no properties connecting to the access. Therefore, arguably any section of this 320m can be hard surfaced and all the same users will still benefit.
- [69] In terms of effects on neighbours, the full length of the southern edge of the access abuts 101A Cliffs Road, a large residential property with the dwelling approximately 45m from the access at its closest point. This is the property which accommodates a short section of Lyders Road where it cuts a corner. The owners of this property have not submitted on this application.
- [70] On the northern edge of Lyders Road is the Adams Way subdivision. This will introduce housing along the top edge of the cliff, but these properties are currently vacant land or have buildings under construction. Many of these properties have a 'no build' zone along the top edge of the cliff, and so the houses will be set back from Lyders Road by approximately 15.0m. It is likely that these properties will have no direct line of sight to the access itself. The exception to this is the house of 2E Clayton Street which is nearly completed. It is not only close to Lyders Road, but has a view along much of the access. It has no legal or physical access to Lyders Road, and as such, the owner has not been considered as an affected party.
- [71] Moving further up the access is the section on Isadore Road. Mr and Mrs Heathman at 9 Highgrove are the neighbours to the west of the access. The house is approximately 18m from the edge of the formation. Mr and Mrs Heathman have no legal rights to use Lyders Road, but can use Isadore Road (although it will not take them far). Mr and Mrs Heathman are therefore not considered to be an affected party, but have written in

support of Mr O'Kane's submission. They seek to have the Isadore Road section of the access upgraded. The O'Kane's driveway connects to Isadore Road more or less in front of the Heathman's property.

[72] Council's Planner/Engineer Transport has considered the application. He has identified the following aspects as being of primary consideration to the proposed subdivision:

- *Lyders Road is substantially a privately owned/maintained private access formation (i.e. right of way), except for the formed portion within the legal extension of Isadore Road, which is publicly owned but privately maintained. Lyders Road has an existing vehicle entrance formation to Cliffs Road.*
- *Lyders Road has a legal width of 12m, though the actual formation width varies between 3m and 5m due to topographical constraints.*
- *Several sites using Lyders Road for access have been granted subdivision consent by the Council in recent years:*
 - *SUB-2013-17 – a 4-lot subdivision of 109 Cliffs Road.*
 - *SUB-2015-96 – a 2-lot subdivision of 113 Cliffs Road.*
- *The above consents contained access upgrade requirements with respect to the Lyders Road formation. It is understood that access upgrade works are progressing, and the applicants of the above consents are working together to satisfy their consent conditions.*
- *Taking into account the previously consented subdivisions, Lyders Road has 17 existing legal users. It is noted that one of these existing legal users has a pedestrian right only. The proposed subdivision would result in 18 sites with the right to use Lyders Road (17 with rights for vehicle use).*

[73] The Planner/Engineer Transport notes that the applicant intends to upgrade a 40m section of Lyders Road as described in the application and above. The applicant does not intend to do other upgrading works over the remainder of the access as it is argued these works will be undertaken as part of SUB-2013-17. Transport, however, considers that the applicant should have a share in the responsibility for upgrading the remainder of the access to the same level as required under SUB-2013-17. For this reason, Transport recommends that the same condition of SUB-2013-17 be imposed on this subdivision consent, should it be granted.

[74] The above access upgrade recommendations notwithstanding, submitters have raised complaints about noise and dust associated with the unsealed section through Isadore Road, and have requested that this section be sealed to mitigate these issues. Transport considers noise and dust issues to be primarily an Environmental Health and/or amenity matter, but sees that there is a benefit to sealing this section of the vehicle access to address these issues. Transport also considers that dwellings located near this section of the vehicle access will be more susceptible to noise and dust effects than those located nearer the seal extension location proposed by the applicant. Transport has therefore recommended alternative consent conditions depending on which section of vehicle access the Committee wishes to be addressed. Should the works around Isadore Road be adopted by the consent holder, Transport considers that the proposed sealing works of Lyders Road should be forgone in terms of a fair and reasonable upgrade requirement.

[75] Transport also considers that the consent should be subject to the same conditions as the other two subdivisions in respect of the entranceway at Cliffs Road itself. The intersection is to be upgraded to provide at least 40m of sight distance in both directions along Cliffs Road, or an alternative sight distance that has been confirmed as acceptable to the Council's Transport Safety Team Leader. The Planner/Engineer Transport advises:

'The applicant for SUB-2013-17, on undertaking engineering design of the vehicle access to Cliffs Road, requested that the sight distance at the vehicle access be lowered to 30m. Transport concluded that this sight distance complied with the NZTA RTS 6 "Guidelines for visibility at

driveways" document, based on observations indicating an operating speed of less than 40km/h at the vehicle entrance location. It was also noted that although the existing driveway currently has limited sight distance, there had been no reported crashes in its vicinity (source – Urban KiwiRAP). This sight distance reduction was confirmed as being acceptable by the DCC Transport Safety Team Leader. For consistency, with the above reduction in sight distance notwithstanding, Transport recommends that the same condition be imposed on the consent for this subdivision, if approved.'

- [76] The Planner/Engineer Transport notes that a submission by Mr Foster has essentially challenged the application of the NZTA document. This has previously been discussed with Mr Foster. Transport is confident that the methodology of that document has been applied in a correct and reasonable manner, but has incorporated the RTS 6 guide into consent conditions which puts the onus on the applicant to confirm the adequacy of the sight distances at the vehicle access. The Planner/Engineer Transport also notes that the submitters have raised concerns about the concentration of a collection point for refuse at Cliffs Road. Transport has not previously observed this issue, but supports the provision of an adequate refuse collection further up Lyders Road.

- [77] The Planner/Engineer Transport comments:

'Overall, Transport has considered the scope and nature of the upgrades to Lyders Road outlined above, taking into consideration the requirements of the District Plan, the Dunedin City Code of Subdivision and other appropriate engineering guidelines, and submissions received by affected parties. It is our view that the two alternative access upgrade requirements, recommended below, constitute a fair and reasonable expectation when compared to the number of additional users of Lyders Road being created. We believe this reasoning is supported by the following aspects:

- Either the proposed upgrade of Lyders Road, or the sealing of the section of Lyders Road that passes through the legal extension of Isadore Road, are considered to be of a length consistent with previous consent requirements, on a "per-site" basis.*
- The above improvements are considered to provide an ongoing improvement of the level of service of Lyders Road facilitated by land development, which would otherwise be unlikely to occur.'*

- [78] The Transport memorandum also discusses that the proposed subdivision should not be seen as a convenient mechanism for remedy or mitigate all the existing deficiencies in the existing access formation of Lyders Road. It is the view of Transport that it would not be fair or reasonable to seek further upgrades from the applicant. However, it should also be noted that this position does not affect the ability of the private parties to negotiate further upgrades to those proposed. There appears to already have been substantive negotiation between the parties to form a private maintenance agreement. This is not a matter which can be imposed as a condition of subdivision consent as it is a private agreement.

- [79] In conclusion, the Planner/Engineer Transport advises:

'Finally, it should be noted that development of land that relies on Lyders Road for access is rapidly approaching the point where the access can no longer be considered to be a low-volume residential access. The threshold is generally considered to be 20 users, which equates to approximately 200 vehicle movements per day, based on relevant transport engineering and planning literature. Future development that crosses this threshold is likely to require significantly greater

consideration of transport effects by an applicant developing land that uses Lyders Road, and a commensurate upgrade in supporting transport infrastructure.'

- [80] Overall, Transport considers that the proposal will have no more than minor adverse effect on the safety and efficiency of the transportation network, subject to the conditions as discussed above.
- [81] Submitters have queried how a proposal which breaches three of the District Plan rules can be considered to have effects which are no more than minor. Perhaps the answer to this is that not all District Plan rules are created equal. This is not a proposal for an out of zone activity that will generate unexpected and/or excessive use of the access. The zoning of the subject site anticipates residential development at the density proposed, and the site has adequate legal access. It is only the standard of the access which is really being discussed. This can be mitigated through the upgrading of the access. As stated above, while the proposed works on the access will not resolve all the existing inadequacies, it is the subdivision process which gives Council the mechanism to have these improvements done, with incremental improvements eventually resulting in a much better access for all. The conditions on the applicants, however, need to be fair and reasonable according to the scale of the proposal. I consider that the proposed works and recommended conditions of consent will achieve this balance.

Infrastructure (18.6.1(d), (e), (i), (j), (n), (o), and (p))

- [82] The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. A review of Council's GIS records indicates that there is a 100mm diameter water pipe which is located in the right of way outside the property. There is a 150mm diameter wastewater pipe and a 150mm diameter stormwater pipe within 9 Highgrove (DP 26191). These connect to a 150mm diameter wastewater pipe and a private open watercourse within 101A Cliffs Road (DP 923) via pipes across Isadore Road.
- [83] It is required that each lot is serviced from an individual Point of Supply as defined by the Dunedin City Council Water Bylaw 2011. All new water service connections to the proposed subdivision must be in accordance with the requirements of section 6.6.2 of the Dunedin Code of Subdivision and Development 2010. The existing dwelling on proposed Lot 1 is currently serviced with an independent water connection to Council services within the access. Proposed Lot 2 will require a new independent water connection which will be approved through the 'Application for Water Supply' process; this will be a condition of consent, should consent be granted. All new water service connections to the development must be in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.
- [84] All aspects relating to the availability of the water for fire fighting should be in accordance with SNZ PAS r509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. There is a fire hydrant (WFH03494) outside the development entrance. Based on SNZ PAS 4509:2008, a W3 (25l/s) zone requires a fire hydrant within 135m and a second within 270m. The new lots are considered to be compliant with these requirements.
- [85] Regarding drainage, the existing dwelling on proposed Lot 1 is already serviced for wastewater drainage by a septic tank. No record of stormwater drainage could be found. Lot 2 is to have a wastewater lateral to the Council-owned wastewater pipe in the access (Isadore Road) via easements. Stormwater is to discharge to the right of way water table or to the watercourse via easements.

- [86] In summary, the Water and Waste Services Business Unit has not identified any real issues for the proposed subdivision, subject to conditions on any consent issued to address the above matters.

Hazards (18.6.1(t))

- [87] Council's Consulting Engineer, MWH, has considered the application, the Hazards Register, street files and available aerial photography. He notes that there are some hazards associated with the land to the north of the proposed subdivision, as that property contains steep slopes. However, there are no hazards identified for the subject site itself. No parts of the property are steeper than 15°, and all of proposed Lot 2 is less steep than 12°.
- [88] The Consulting Engineer identifies the primary risks associated with the proposal being the widening and hard surfacing of the access. There is little information provided in the application on this subject except that the applicant notes the legal width of Lyders Road is 12m but the formation width varies between approximately 3m and 5m. The Consulting Engineer understands that the applicant seeks to avoid the need for any should retaining works when widening the formation to 5.0m 'where possible', and there is no intention to widen the road in towards the cliff face.
- [89] MWH advise that there are no grounds to decline the subdivision proposal on the basis of known hazards. However, the Consulting Engineer recommends the following advice:

There is potential for surcharge loading as a result of sideling fill to widen the existing access road, if a 5.0m width is constructed throughout.

- *If there are such fills, then slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.*

Amendments to the existing road alignment may be required, if the current "physical access outside the legal corridor" (Smails Corner) is required to be re-routed. Such work is likely to require excavation into the high side of the road, with associated retaining works.

- *All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s;*
- *Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.*

Earthworks

- [90] This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of any new access, manoeuvring areas, or retaining walls (should any be required). Should future earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.

Landscape (13.8)

- [91] The subject site is part of ULCA21 – Upper St Clair, and development is therefore subject to Section 13 of the District Plan which deals with urban landscape conservation areas (ULCA). The construction of any structure greater than 20m² in area is considered to be a controlled activity pursuant to Rule 13.8.1, where Council has control over the impact of the location, design and appearance of the structure and associated site development on the 'natural' landscape qualities and character of

the setting. Although there is no actual proposal to build on the subject site at present, the logical consequence of the subdivision will be a new dwelling. Accordingly, the proposed subdivision application has been assessed by Council's Landscape Architect.

- [92] Council's Landscape Architect visited the site on 21 September 2016. He notes that where there is an underlying residential zone and an overlying ULCA zone, there are situations where anticipated urban development conflicts with the ULCA values. It is his opinion that this has already occurred to a considerable extent in the extensive subdivision immediately to the north (Adams Way). In this case, as long as the proposed dwelling to be established is of a single storey and relatively unobtrusive, this conflict is unlikely to occur. Existing vegetation and the established dwelling to a large extent will screen a new dwelling. Topography and existing trees would also provide important screening when the site is viewed from the south seaward side around Cargill's Castle and from St Clair to the north-east.
- [93] Urban Landscape Area 21 is one of twenty four identified in the Dunedin City District Plan although specific values for individual ULCA's are not outlined in the Plan. ULCA's are described in the explanation to Policy 13.3.1 as areas that *"provide contrast with and relief from the built environment and have significant landscape value"*. The Landscape Architect notes that landscape values here are, principally, the coastal location and the extensive natural vegetation, predominantly to the north and east on a neighbouring property. As noted earlier, this location, being flat and well screened when viewed from most directions, would provide a relatively unobtrusive site for the addition of another dwelling.
- [94] The Landscape Architect notes that the upgrading of the access may be a more difficult situation in relation to effects on the values of ULCA 21. Any significant widening into the immediately adjacent slope to the north would potentially have an adverse effect on the steep sided gully and its associated bush. Other widening to the downhill south side, depending on how extensive, could also have an adverse effect on the gully's natural values. The Landscape Architect comments:
- 'At the moment the gully retains values related to its natural topography and vegetation, but there is no doubt that continuing urbanisation in this area is slowly diminishing these natural values. This cumulative effect has reached almost a complete transition at the higher elevations of what is still nominally a ULCA, where typical subdivision and dwelling establishment has been largely fully developed. The lower gully area where the private road is located, and the ULCA areas further towards the coast, still retain some of the qualities which first led to the establishment of a ULCA. However, this too is cumulatively changing, and the values generally ascribed to ULCA's are becoming less obvious.'*
- [95] The Landscape Architect notes that the primary concerns for this subdivision proposal will be the access matters as the existing access is narrow and poorly maintained. There are more than 12 users of this access already. Any improvements may have an adverse impact on ULCA values, depending on how extensive any changes may be.
- [96] The Landscape Architect considers that the proposed subdivision will have no more than a minor adverse effect on the values of the ULCA setting. The new section would be on relatively flat land and well screened from views in. Any subsequent dwelling development would be subject to another resource consent application and adverse effects can be assessed at this point. However, the subdivision would have the effect of making it easier to establish a dwelling. The Landscape Architect recommends a consent notice on the title of the new lot noting that the site is in a ULCA and that development should be kept at one-storey. He concludes: *"Overall, I consider that this subdivision and subsequent dwelling development would have no more than a*

minor effect on the values of this setting, as long as the dwelling is of an appropriate modest scale."

Amenity Values and Character (8.13.5)

[97] The Resource Management Act 1991 defines 'amenity values' as:

"those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"

- [98] The District Plan further notes that amenity values in residential areas arise from a number of aspects, including access to sunlight, density, adequate parking, privacy, peace and quiet, landscaping and space between buildings, and that these values need to be protected in order to maintain residential amenity values.
- [99] The proposal is for a residential activity in a residential zone, and in this respect the effects of the activity on amenity values and the character of the area have largely been anticipated by the zoning of the site. The proposed subdivision also comfortably meets minimum lot size for the Residential 1 zone, and the construction of a single dwelling on each of the proposed lots is well within expectations for density for this zone. Although there is currently a District Plan restriction on building to one residential dwelling per site, this is a response to issues with water supply and not an attempt to maintain amenity values through the control in number of houses. It has also been resolved through Council-upgrades to the water supply in the area, and no longer applies in any case.
- [100] The use of the access may have adverse effects on the amenity of neighbouring properties. A number have provided affected party approval to the proposal, and accordingly, pursuant to section 104(3)(a)(ii), Council must not have regard to any effects on these persons. Of those persons who have submitted on the proposal, only Mr and Mrs Stewart expressed concerns about amenity.
- [101] The Stewarts own the house at 107 Cliffs Road, being the first house passed when entering Lyders Road from Cliffs Road. All traffic therefore passes this dwelling. The submission notes that the road is not a public road and is not formed to a standard expected for a normal residential area. This, combined with the rubbish collection point near the intersection of Lyders Road and Cliffs Road, *'... has significant impact on amenity values and is not appropriate in a suburban area.'* It is possible that a refuse collection point further up Lyders Road can be organised, in which case, this aspect of the submission can be resolved. It is not clear from Mr and Mrs Stewart's submission whether the upgrading of the section of road in front of their property will address their opposition to the subdivision.
- [102] Mr O'Kane (supported by Mr and Mrs Heathman) has raised the issues of increased dust and noise in his letter dated 19 October 2016 (received after his submission and attached to Mr and Mrs Heathman's comments). As noted by Council's Planner/Engineer Transport, these are more amenity matters than transportation effects. Transport is prepared to accept a requirement to seal the section of access through Isadore Road in lieu of sealing further down Lyders Road, should the Committee be of a view the upgrading of this section of access to be more appropriate.
- [103] Overall, the proposed subdivision is not expected to compromise the amenity values of the area. It is for a residential development that is in accordance with the expectations of the zoning, and will utilise an existing legal and physical access. Transport considers that the traffic effects arising from the additional use will be mitigated by appropriate consent conditions. The application states that the additional sealing of the access will improve the amenity for the users and neighbours of Lyders Road.

Construction Effects

- [104] Should consent be granted and the access upgrade work undertaken, there is likely to be a period of disruption to neighbours and users of the access during the construction period. As noted above, the works are permitted under the Property Law Act 2007, as so the question is not 'if' the works should occur but 'how' to undertake the works with minimal disruption to other parties.
- [105] Any construction works will be temporary in nature. People generally recognise this fact and are often prepared to submit to adverse effects over a construction period whereas otherwise the effects would be considered unacceptable. Effects include noise, dust generation, and vibration. These can be largely managed through appropriate methods (for example, dampening down of dust), and limiting the works to general working hours during the week when less likely to disturb people.
- [106] Maintaining access along Lyders Road during the upgrade works is possibly more of a challenge. The application does not comment on how this matter will be managed as part of the undertaking of the upgrade works. Ideally, the access will remain open at all times, and the works will occur simultaneously with general use. If the access is to be closed for more than a very short period, then prior warning should be in place to enable the users of the access to adjust, if necessary, to the inconvenience. For this reason, it is my opinion that, should consent be granted, the provision and approval of a traffic management plan should be a condition of consent.

Cumulative Effects (8.13.13)

- [107] 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".*
- [108] 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'.
- [109] In this case, the zoning of the land is Residential 1 which provides for a density of development of one residential unit per 500m² of site area. The proposed subdivision, creating two lots on a site of 2029m², comfortably meets the density provisions of the District Plan. In fact, the District Plan would anticipate up to four dwellings on a Residential 1 site of this size, so the one additional house cannot be considered to have cumulative effects which are more than minor on the Residential 1 zone. Although both new lots will be large enough for two residential units under the density provisions of the District Plan and the Proposed Plan, there are more than twelve users of the private access, Lyders Road, and accordingly, any further development or subdivision will require resource consent under the current District Plan. The situation could change with the rules of the Proposed Plan, but these are still subject to submissions and are not yet determined.
- [110] Regarding the increased usage of the access, it is acknowledged that the standard of the access is less than ideal. To meet District Plan standards, it should have an extra 1.5m of formed width, generally speaking, and be hard surfaced for its entire length (arguably excluding the portion on Isadore Road road reserve). The proposed upgrading of this access does not rectify the deficiencies in the access formation or alignment, but will improve the standard of the access to a degree considered proportional to the proposed increase in traffic and in light of the number of existing users. It is also noted that the legal width of the access is 12m for much of its length, only decreasing to 6.0m over 80m or so at the upper end. Therefore, a fully compliant

formation can be formed within this legal width at any time the owners and users (either individually or as a group) decide to undertake the work. If there are problems with the access, then the residents do have the opportunity to address these issues themselves.

- [111] The District Plan specifies a maximum number of twelve users for a shared access, which is perhaps a convenient figure at which to consider the additional users as having cumulative effects on the operation of the access. Council's Planner/Engineer Transport has noted that the use is still at a level considered to be a 'low-volume residential access', with the threshold generally considered to be 20 users. This proposal will introduce house number 17 to the road (theoretically at least; it will be the tenth actual house if existing vacant sites and the new lots of the uncompleted subdivision consents are excluded). The Planner/Engineer Transport has suggested that, once this level is reached, significantly greater consideration of transport effects, and a commensurate upgrade of the infrastructure, will be required. Transport considers that the additional traffic generated by this proposal, however, will be at a level that can be mitigated by the proposed upgrading of the access. Transport therefore does not consider this subdivision proposal to have cumulative effects on the operation of the access which are unacceptable. For these reasons, it is my opinion that the cumulative effects of the increased usage of the access will be no more than minor.

Sustainability

- [112] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources. It also seeks to suitably manage infrastructure.
- [113] It is my opinion that the proposed subdivision will have adverse effects on amenity which are no more than minor. The proposed density of development is well within District Plan expectations for the Residential 1 zone, and although this is an urban landscape conservation area, the construction of dwellings within this designation is a controlled activity where the dwellings are an expected component of the landscape. There is existing mature vegetation on-site which will continue to contribute to the amenity of the area after subdivision.
- [114] The Consents and Compliance Officer, Water and Waste Services Business Unit, has not identified any concerns about the sustainability of the existing service infrastructure. The restricted water supply designation for this land has been addressed by a capital works project and is no longer relevant.
- [115] Council's Consulting Engineer, MWH, has advised that there are no known stability issues with the land, and does not foresee any issues for the development of proposed Lot 2. He has provided some advice for earthworks associated with the access upgrade, but has not identified any concerns about the sustainability of the building sites or the stability of the wider area.
- [116] The Transportation Planner considers that the proposed subdivision can proceed with no adverse effects on the safe and efficient use of the transportation network, subject to conditions on the proposed upgrading of the access. The use of the existing access by one new residential activity is considered to be sustainable use of the access.
- [117] Overall, I am of the opinion that the proposed subdivision will be sustainable use of Dunedin City's physical and natural resources, provided the proposed upgrading of the access is undertaken. Any remaining inadequacies of the access are fixable, and can be resolved by the parties considered affected. However, it appears that the catalyst for the upgrading of the road is further development.

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

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

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin	The proposal is generally consistent with this objective and policy. The use of the land for residential activity is in accordance with the zone expectations. Likewise, any affects arising from the use of the access should be viewed in light of the permitted baseline. Accordingly, the proposed subdivision is expected to maintain amenity values.
Policy 4.3.1	Maintain and enhance amenity values.	

Manawhenua

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

Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is considered to be consistent to this objective and policy. The proposal is for a subdivision to provide for residential activity in a residential zone, and the density provisions are comfortably met. The proposal is considered to maintain the amenity values and character of the residential area.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.2	Encourage the maintenance of the residential amenity in neighbourhoods and areas by managing the coordination of the subdivision of land.	Subdivision proposals are initiated by the owners of the subject sites, and Council seeks to manage the effects of the proposals. This proposal is considered to maintain the residential amenity of the area (it respects the zoning), and Council will require the upgrading of the access at a level commensurate with the scale of the subdivision proposal. The proposal is considered to be consistent with this policy.
Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	The proposal is considered to be consistent with this objective and policy. The proposal involves residential development in a residential area at a density permitted by the

Policy 8.3.4	Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	District Plan. There are no issues with the service infrastructure for this development. The proposal is not considered to have adverse effects on the management of Council's transportation infrastructure.
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Townscape

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objectives?</i>
Objective 13.2.1	Ensure that the important values and characteristics of the natural features and areas which provide the setting for the urban areas are protected.	Although there are no proposals for building on the subject site, the proposed subdivision is expected to result in one new residential dwelling for this land. Council's Landscape Architect does not consider that the proposal will have adverse effects on the urban landscape conservation area, but recommends that the new dwelling be of an appropriate and modest scale. There are, however, no District Plan controls on the scale of housing within a landscape area except for the bulk and location rules of the residential zone. The proposal is considered to be consistent with this objective and policy.
Policy 13.3.1	Protect and enhance the natural character of those areas identified as Urban Landscape Conservation Areas in the District Plan Maps through: • Protection of natural landforms and waterways • Protection of trees and areas of bush • Control over the erection of buildings and other development.	

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.1	Ensure that the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	Council's Consulting Engineer, MWH, has not identified any issues with land stability for the new. It is considered that there is a stable building platform on Lot 2, and no significant amount of vegetation will need to be removed. The Consulting Engineer did make a number of recommendations for earthworks to upgrade the access. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.2	Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	The application does not include development proposals for the new vacant sites, and the need for future earthworks is not considered as part of this application. Any earthworks undertaken while upgrading the access will be subject to Section 17 of the District Plan, and resource consent may be required if there are breaches of the performance criteria within this section.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The proposed subdivision is considered to be sustainable development. Although the access is not up to District Plan standards, the proposal will upgrade a portion of this access, thereby improving the present situation for other users. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.1	Avoid subdivisions that inhibit further subdivision activity and development.	
Policy 18.3.3	Allow the creation of special allotments that do not comply with the subdivision standards for special purposes.	There are no special allotments to be created.
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical	The proposal has been assessed by Council's Consulting Engineer. He has no concerns about the proposal. The proposal is considered to be consistent with this policy.

	limitations are identified and will be managed in a sustainable manner.	
Policy 8.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The new lot will be serviced with reticulated water and foul drainage. Stormwater will discharge to the access water table or watercourse. The proposal is considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	The proposed subdivision is considered to take into account the physical attributes of the area. It is considered consistent with this objective.
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The proposed subdivision is in accordance with the Residential 1 zoning, and therefore maintains the potential use of the land resource. The proposal is considered to be consistent with this objective.
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	The subdivision consent application is being heard with the associated land use application for residential activity and technical breaches including those of the access.
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	The proposal is considered to be consistent with this objective. The proposed subdivision is for residential sites in a residential zone, and in this regard, the development of residential land is not considered to have adverse effects on the City's natural and physical resources.
Policy 18.3.5	Require subdividers to provide information to satisfy the Council that the land to be subdivided is suitable for subdivision and that the physical limitations are identified and will be managed in a sustainable manner.	This is a process policy. The application is considered to adequately deal with the potential issues that can arise with subdivision and development of land.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The applicant proposes to upgrade a section of the existing access as part of the subdivision works. The degree of upgrade is considered by Transport to be proportional to the increased use of the access by the new residential activities. However, works in a different section may be more appropriate. Regardless of where the upgrading is focussed, the proposal is considered to be consistent with this objective and policies.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	

Transportation

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	Transport has no concerns about the effects of the proposed subdivision on the wider transportation network. Visibility limitations at the entranceway to Lyders Road are to be addressed as part of the subdivision conditions.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	The private access is long and not formed to Council standards for private ways. The proposed subdivision will increase the use of this access. The applicant proposes upgrading the access, although it will not meet the District Plan standards over its full length. However, the works are still expected to improve the access, to the benefit of all users. The access is being improved sequentially with each
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	

Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	subdivision proposal. The proposal is considered to be consistent with these objectives and policies.
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.5	Ensure safe standards for vehicle access.	

Proposed Plan

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

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	Lyders Road is a private access. Its intersection with Cliffs Road has visibility issues, but is to be upgraded as a condition of consent to improve visibility. The upgrading of Lyders Road will be occurring with the other two subdivisions which have already been consented. This proposal will upgrade another section of the access. The upgrading works are not considered to adversely affect the amenity values of the zone. The proposal is considered to be consistent with this objective.
Policy 6.2.1.1	Enable the operation, repair and maintenance of the roading network.	There are no changes proposed for the roading network except at the intersection with Lyders Road. This work is to improve the safety of the access, and will be occurring regardless of this proposal as both SUB-2013-17 and SUB-2015-96 require the improvements as conditions of consent. The proposal is considered to be consistent with this policy.
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	The proposed subdivision and development of the new lots is not expected to adversely impact on the transport network. The private Lyders Road and the access rights over this route are existing situations which the Council cannot change except to require upgrading works commensurate with the scale of the development proposal whenever there is a resource consent application. This proposal will introduce only one new dwelling, but will upgrade a section of the road used by numerous parties. The safety of the road is likely to be improved as a result. The proposal is considered to be consistent with this objective and these policies.
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	
Policy 6.2.3.13	Require subdivisions to be designed to ensure that any required vehicle access can be provided in a way that will maintain the safety and efficiency of the adjoining road and wider transport network.	
Objective 6.2.4	Parking areas, loading areas and vehicle accesses are designed and located to: a) provide for the safe and efficient operation of both the parking or loading area and the transport network; b) facilitate the safe and efficient functioning of the transport network and	Proposed Lot 1 has existing parking and access. Proposed Lot 2 is of sufficient size that adequate parking and manoeuvring space can be achieved. The subdivision proposal will utilise existing access infrastructure which is privately owned and has inadequacies in its formation. In order to improve the existing

	connectivity for all travel methods.	situation, the applicant proposes upgrading a section of the access for use by all parties. The improvements at the Cliffs Road intersection will also be undertaken. The proposal is considered to improve the safe and efficient operation of the private access, and is consistent with this objective.
Policy 6.2.4.2	Require all driveways to be designed to ensure: a) the surfacing and gradient of the driveway allows it to be used safely and efficiently; b) that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. c) the width of the driveway is sufficient to allow the type and number of vehicles likely to be using it to do so safely and efficiently; and d) sufficient distance is provided between shared driveways and dwellings.	The private Lyders Road is not up to District Plan standard. As a historical situation with a number of users, it is not appropriate for Council to require the applicant to resolve all the formation limitations of the access. However, the subdivision consent is a mechanism for improvement works commensurate to the scale of the proposal to be undertaken, and these will be a condition of consent. The access will not carry gravel or other material on to Cliffs Road. There is sufficient distance between shared driveways and dwellings. The proposal is considered to be consistent with this policy.
Policy 6.2.4.4	Require vehicle accesses to be limited in number and width, in order to avoid or, if avoidance is not possible, adequately mitigate adverse effects on: a) pedestrian safety and ease of movement; and b) the safety and efficiency of the transport network.	This policy is speaking of the number of accesses onto legal road rather than the number of users of an access. The proposed subdivision will not add any new access onto Cliffs Road, and only one dwelling onto the private access via an existing driveway. The proposal is considered to be consistent with this policy.
Policy 6.2.4.6	Require sufficient visibility to be available at vehicle crossings to minimise the likelihood of unsafe vehicle manoeuvres.	The intersection of Lyders Road and Cliffs Road has known visibility issues. These are to be improved as a condition of consent for SUB-2013-17 & SUB-2015-96. It is recommended that the same conditions be imposed on this subdivision consent, should it be granted, to ensure that this work is done before any additional residential use of the access ensues. The proposal is considered to be consistent with this objective.

Public Health and Safety

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.	The Water and Waste Services Business Unit has not identified any concerns with the servicing of the new lot, or the capacity of the existing infrastructure.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: a) in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and b) in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure.	The proposal is considered to be consistent with this objective and policies.
Policy 9.2.1.3	Require subdivisions to provide any available water supply and wastewater public infrastructure services to all resultant sites that can be developed, unless on-site or multi-site services are proposed that will have positive effects	

	on the overall water supply and/or wastewater public infrastructure services, or any adverse effects on them are insignificant.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposed new lots will have adequately water supply available for fire fighting, therefore meeting the residents' health and safety requirements. The proposal is considered to be consistent with this objective and these policies.
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	

Residential Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 15.2.1	Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facilities, and commercial activities that support the day-to-day needs of residents.	The proposed subdivision is for residential development in a residential zone. The residential development of the subject site is appropriate in terms of the zoning and the surrounding area. There is no expectation that the vacant Lot 2 will be developed with anything other than residential activity. The proposal is considered to be consistent with this objective and policy.
Policy 15.2.1.1	Provide for a range of residential and community activities, where the effects of these activities can be managed in line with objectives 15.2.2, 15.2.3, 15.2.4, and 15.2.5 and their policies.	
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents.	The proposed subdivision will create two new residential lots. One will contain the existing residential dwelling on-site, and will have adequate amenity open space. Proposed Lot 2 will be twice minimum site size for the General Residential 1 zone, and there is plenty of opportunity to develop the site while providing space around all the new buildings. The proposal is expected to be consistent with this objective and policy.
Policy 15.2.2.1	Require residential development to achieve a high quality of on-site amenity by: a) providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, and recreation; b) having adequate separation distances between residential buildings; c) retaining adequate open space uncluttered by buildings; and d) having adequate space available for service areas.	
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	No new activity is proposed for Lot 2, but it is expected to be residential activity. This will maintain the amenity of the surrounding residential area, and is considered to be consistent with this objective.
Objective 15.2.4	Subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	The proposed subdivision of the subject site is considered to maintain the character of the residential area. Residential use of Lot 2 is entirely in accordance with the expectations of the zone and cannot be considered out of character. As a rear site, there is no streetscape to consider in this case. The development of Lot 2 will be able to occur without significant earthworks, although there will be changes to the access. Council's Landscape Architect has identified possible adverse effects on landscape arising from the
Policy 15.2.4.2	Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	
Policy 15.2.4.6	Only allow subdivision activities where the subdivision is designed to ensure any future land use and development will: a) maintain the amenity of the streetscape b) reflect the current or future intended	

	character of the neighbourhood; c) provide for development to occur without unreasonable earthworks or engineering requirements; and d) provide for quality housing.	upgrading and earthworks of the access, but these are expected to be temporary. The access is an existing feature which will be altered. The proposal is considered to be consistent with this objective and these policies.
Objective 15.2.5	Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: a) visual amenity and character; b) the stability of land, buildings, and structures; and c) surrounding properties	The proposal does not include any application for earthworks although earthworks are likely to be necessary for the upgrading of the access. Council's Consulting Engineer has made a number of recommendations to avoid instability issues arising. Further land use consent for earthworks for the access upgrade or future development of Lot 2 will be required if the earthworks breach any rule of the operative District Plan.
Policy 15.2.5.1	Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by: a) being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b) using a batter gradient that will be stable over time.	The proposal is considered to be consistent with this objective and policy.

Assessment of Regional Policy Statement and Plans

[119] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. At the time of writing this report, the decisions are within the appeal period.

[120] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, and 9: Built Environment. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:

- Objective 1.1: Resource Management in Otago;
- Objective 4.3: Infrastructure is managed and developed in a sustainable way;
- Policy 4.3.1: Managing infrastructure activities;
- Objective 4.5: Urban growth and development is well designed;
- Policy 4.5.1: Managing for urban growth and development;
- Policy 4.5.2: Planned and coordinated urban growth and development;
- Policy 4.5.7: Integrating infrastructure with land use;

7. DECISION MAKING FRAMEWORK

Part II

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

- 5(2)(a) "Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;
- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment",

- 6(b) "The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development";
- 7(b) "The efficient use and development of natural and physical resources";
- 7(c) "The maintenance and enhancement of amenity values";
- 7(f) "Maintenance and enhancement of the quality of the environment"; and
- 7(g) "Any finite characteristics of natural and physical resources".

- [122] With regard to Section 5(2)(a), it is considered that the proposed subdivision will maintain the physical resource of the residential land by subdividing the subject site in accordance with the expectations of the District Plan for the Residential 1 zone.
- [123] With regard to Section 5(2)(c), it is considered that the adverse effects of the proposed subdivision will be largely confined to the use of the shared access. The proposed subdivision seeks to mitigate these effects through the upgrading of the existing formation.
- [124] With regard to Section 6(b), the subject site is located within an urban landscape conservation area. Residential activity is an expected component of this designation, and the proposed development of the new lots at a density which is less than the maximum permitted by the zoning, is not considered to be an inappropriate development for this land. Furthermore, the existing mature vegetation will contribute to the mitigation of visual impacts on the landscape.
- [125] With regard to Section 7(b), it is considered that the proposed subdivision is acceptable use and development of the land resource.
- [126] With regard to Section 7(c), it is considered that the proposed subdivision of will maintain the amenity values of the Residential 1 zone. Any adverse effects from increased dust and noise resulting from traffic on the access can be mitigated through upgrading of the access. This is not entirely the applicant's responsibility.
- [127] With regard to Section 7(f), it is considered that the proposed subdivision will maintain the quality of the environment.
- [128] With regard to Section 7(g), it is considered that the Residential 1 zoned land resource is of finite character. The subdivision proposal will maintain the natural and physical land resource as the new lots will be comfortably larger than minimum lot size for the Residential 1 zone.

Section 104D

- [129] Section 104D of the Resource Management Act requires 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 that the adverse effects on the environment will be no more than minor, or 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. This test is only relevant for the subdivision component of the application. In my opinion, the proposed subdivision of the subject site will have effects which are no more than minor and are not contrary to the objectives and policies of the District Plan. Therefore Council can exercise its discretion under Section 104D to grant consent subject to the recommended conditions.

Other Matters

- [130] Case law has suggested that in order to grant consent to a non-complying activity, the application needs to be a 'true exception' otherwise, in terms of precedent effects, the integrity of the Plan could be undermined. In this instance, the subdivision proposal is non-complying because the two new lots will not have frontage to legal road. However, this is considered a technicality as all lots will have adequate legal access via rights of way. A compliant access can be formed within the legal corridor at any time,

and is not reliant on consent from Council. Therefore, the subdivision proposal is not considered to challenge the integrity of the District Plan.

Section 104

- [131] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects of the proposal will be no more than minor.
- [132] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the application is consistent with the relevant objectives and policies of the District Plan relating to sustainability, residential activities, townscape, subdivision and transportation. It is also consistent with those relevant objectives and policies of the Proposed Plan relating to transportation, public health and safety, and residential.
- [133] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement. In section [120] of this report it was concluded that the applications are consistent with the bulk of the relevant objectives and policies of the Regional Policy Statement for Otago and the Proposed Regional Policy Statement for Otago.
- [134] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonable necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents. The proposal is not considered to have features which will undermine the integrity of the Plan.

8. RECOMMENDATION

Subdivision SUB-2016-84

*That pursuant to section 34A(1) and 104B, and after having regard to Part II matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of 111A Cliffs Road, Dunedin, being the site legally described as Lot 1 DP 25450 (CFR OT17C/223) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as shown on the attached certificate.*

Land Use LUC-2016-430

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of residential activities on Lots 1 and 2 SUB-2016-84 utilising an access with under-width formation which is not fully hard surfaced and serves more than twelve users; at 111A Cliffs Road, Dunedin, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

9. REASONS FOR RECOMMENDATIONS

- [135] It is my opinion that any actual or potential adverse effects on the environment of the proposed subdivision and use of the access will be no more than minor for the following reasons:
- a) The proposal is for a subdivision to create residential sites in a residential zone, and in this regard the effects of the proposal are largely anticipated by the District Plan. The new lots to be created will be of generous size for the Residential 1 zone, and comfortably comply with the density provisions of the zone. All new lots will have adequate legal access. The subdivision itself does not present any issues for Council.

- b) The proposed subdivision will add one additional user to the existing access. The access is long, and not formed to District Plan standards. It also includes a section formed as private driveway on legal road reserve. The applicant proposes upgrading the formation and will hard surface a section, therefore improving the access. Not all inadequacies of the access will be rectified as part of this consent, but this subdivision, two already consented subdivisions, and any subdivisions or development proposals occurring the future, provide the best opportunity for the formation standard of the access to be improved. Transport has given two options for upgrade works. Transport considers either of the recommended options is fair and reasonable given the number of existing users and is proportional to the proposed increase in use. The upgrade will improve the access for all users. Where this consent repeats conditions already imposed on SUB-2013-17 and/or SUB-2015-96, this is to ensure that the works are completed regardless of which subdivision goes first. The consent holders have the opportunity to undertake the works together and to all contribute to the expenses.
- c) The increased use of the access is considered to be acceptable. The District Plan permits up to twelve users on a private way. The proposed subdivision will introduce one additional user making 17 in total, although there are several undeveloped lots and two subdivision consents which have yet to be given effect. The actual users, currently, number fewer than 12 but this is unlikely to continue. Transport notes that a driveway serving fewer than 20 users is still considered to be a low-volume access. The proposed upgrade is considered to be commensurate with the increase in intensity of use arising from the proposed subdivision, and will benefit all users at the upper end of the access. It is considered that the inadequacies in the access formation over the balance of the access should not prevent the applicant subdividing in accordance with the zone expectations.
- d) The Property Law Act 2007 allows the owners and/or users (as a group or individually) to undertake work on the rights of way at a time suitable for themselves. Therefore, existing inadequacies in the access formation can be rectified by the parties involved at any time. There is sufficient legal width available over the full length of the access for an access to be created which is fully compliant with District Plan standards, although there may be a requirement for resource consent for earthworks or retaining wall construction. It is not considered fair or reasonable to expect the applicants to undertake all the work themselves.
- e) The section of access causing dust and noise problems for some parties is actually the legal road portion where there is no District Plan directive that the access should be hard surfaced. Nor is there any District Plan limit to the number of users of this section of road. It is not Council's responsibility to upgrade a private access over legal road, nor to form the existing access to road standard. The applicant has the option of upgrading this section of the access rather than the lower section of Lyders Road and/or any of the users of this access can upgrade any section of it at any time.
- f) While there is some opposition to the subdivision proposals for this area based on concerns about the standard of the access, it is the resource consents for subdivision which create the circumstances most likely to result in the improved access formation. Council can require such works as conditions of consent but Council must be fair and reasonable in its requirements. One property owner should not have to resolve all the access inadequacies, especially as the driveway is an historical situation which all property owners have bought into. Although any of the users and owners of the access can upgrade the access at any time, this work has not been done to date.
- g) There are no known issues with the servicing of the proposed lots. The Water and Waste Services Business Unit has no concerns about the capacity of the

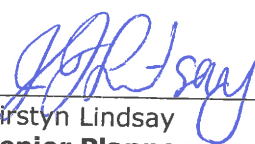
infrastructure to service the new lots. Stormwater drainage will need to be managed properly.

- h) The Consulting Engineer has not identified any concerns about the stability of the new sites. He did, however, make a number of recommendations for the earthworks associated with the upgrading of the access. Should these earthworks breach any of the District Plan rules, further resource consent will be required, giving the Council the opportunity to impose conditions as appropriate.
 - i) Residential units are an expected component of the urban landscape conservation areas, and in this case, the new unit will be established within an area surrounded by well-established vegetation. The Landscape Architect has no issues with the proposed new dwelling or its site, except to recommend that any future dwelling for Lot 2 be relatively modest in its scale because of potential effects on the urban landscape conservation area.
- [136] For the reasons outlined in section 6 of this report, it is considered that the proposal is consistent with the relevant objectives and policies of the District Plan.
- [137] Section 104 of the Act requires that the Council take into account Regional Policy Statements and rules of any plan or proposed plan. The proposal was found to be consistent with the objectives and policies of the Regional Policy Statement for Otago and Proposed Regional Policy Statement.
- [138] The subdivision and land use proposals are considered to meet both gateways of the section 104D, and therefore the Committee is in a position to consider the granting of consent.
- [139] The subdivision and land use proposals are considered to satisfy the relevant sections of Part II of the Act.

Report prepared by:

Report checked by:


 Lianne Darby
Planner


 Kirstyn Lindsay
Senior Planner

28.10.2016
 Date

28 October 2016
 Date

APPENDIX 1: DRAFT CONDITIONS

Subdivision SUB-2016-84

That pursuant to section 34A(1) and 104B, and after having regard to Part II matters and sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of 111A Cliffs Road, Dunedin, being the site legally described as Lot 1 DP 25450 (CFR OT17C/223) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:

1. The proposal shall be given effect to generally in accordance with the plan prepared by Terramark Ltd entitled, 'Lots 1 and 2 being a Proposed Subdivision of Lot 1 DP 25450 111A Cliffs Road Dunedin, Locality and Access Diagram,' and the accompanying information submitted as part of SUB-2016-84 received by Council on 14 September 2016, except where modified by the following:
2. That pursuant to section 116 of the Act, lawful access is obtained over Part Section 32 DP 923 Ocean Beach Survey District (101A Cliffs Road), or the access is rerouted so as to avoid this property, or written consent is provided by the owners of this property allowing access to continue on an informal basis.
3. Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:
 - a) If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.
 - b) That easements for services in favour of Lot 2 shall be duly created or reserved as necessary, including any easements needed to discharge stormwater into the watercourse.
 - c) That the following amalgamation condition shall be shown on the survey plan:

'That the 1/10th share of Part Section 1 Block XIII Dunedin & East Taieri Survey District (CFR OT17C/233) held in CFR OT14D/86 be held as two undivided 1/20th shares by Lots 1 and 2 hereon (one share each) as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith (see CSN Request 1398008).'
4. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:

Access

- a) That the intersection of Lyders Road and Cliffs road shall be upgraded so that there is at least 40m of sight distance for a driver, along Cliffs Road in both directions, or an alternative distance that has been sufficiently justified and agreed to by the Transport Manager. Detailed engineering plans for this upgrade shall be submitted to the Transport Manager for approval prior to construction works commencing.
- b) That the shared private access shall be upgraded generally in accordance with the measures proposed in the application. The upgrades shall include the following:

EITHER:

- A1: The lower section of Lyders Road, as shown in red on the application plan and not measuring less than 40.0m in length, shall be widened

to a minimum of 5.0m where reasonably possible or, failing that, the maximum extent of any narrower width, and shall be hard surfaced over the full formation. The access shall be adequately drained.

OR:

- B1: The section of Lyders Road that passes through the legal extension of Isadore Road shall be widened and hard surfaced up to 5.0m in width as is reasonably possible. The upgraded vehicle access formation shall be adequately drained.
- B2: The full length of the rest of the access from 160m chainage to the top end shall be reshaped and resurfaced, and shall include adequate drainage provisions.
- B3: A passing bay shall be constructed on Lyders Road near the legal extension to Isadore Road. The profile of the passing bay shall be constructed in accordance with the relevant NZTA, Austroads, or other appropriate engineering guidelines as accepted by Transportation Operations.
- B4: Two traffic calming structures shall be installed, one above the vehicle entrances of 107 & 113 Cliffs Road.
- B5: An appropriate refuse collection area shall be formed at the top of Lyders Road. Details for the collection area shall be provided to Transport for approval prior to construction.
- c) A Traffic Management Plan for the management of the access during upgrading works shall be submitted to the Transport Manager for approval prior to works being commenced.
- d) The access shall be managed in accordance with the approved Traffic Management Plan during the construction period of all upgrade works.
- e) All construction work on the site shall be designed and conducted to ensure that construction noise does not exceed the noise limits in the following table.

Time of Week	Time Period	Leq (dBA)	L max(dBA)
Weekdays	0730-1800	75	90
	1800-2000	70	85
	2000-0730	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0730	45	75
Sundays and public holidays	0730-1800	55	85
	1800-2000	45	75

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. Please Note: the lower noise limits on Sundays and Public Holidays may mean that no construction work can occur on these days.

Water Supply

- f) An "Application for Water Supply – New Service" shall be submitted to the Water and Waste Services Business Unit for approval to establish new water connections to Lot 2. Details of how Lot 2 is to be serviced for water shall accompany the application.

- g) Upon approval by the Water and Waste Services Business Unit, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.

Erosion and Sediment Control

- h) That all practicable measures shall be used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.

Land Use LUC-2016-430

That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of residential activities on Lots 1 and 2 SUB-2016-84 utilising an access with under-width formation which is not fully hard surfaced and serves more than twelve users; at 111A Cliffs Road, Dunedin, subject to conditions imposed under section 108 of the Act, as follows:

1. The proposal shall be given effect to generally in accordance with the plan prepared by Terramark Ltd entitled, 'Lots 1 and 2 being a Proposed Subdivision of Lot 1 DP 25450 111A Cliffs Road Dunedin, Locality and Access Diagram,' and the accompanying information submitted as part of LUC-2016-430 received by Council on 14 September 2016, except where modified by the following:
2. Only one residential unit shall be established on each of Lots 1 and 2 because of limitations with the standard of the shared access from Cliffs Road.

Advice Notes

1. In addition to the conditions of a resource consent, the Resource Management Act establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake. A similar responsibility exists under the Health Act 1956.
2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
3. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
4. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for any construction work as part of the subdivision.
5. All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service. Any new development must be within 135m of a fire hydrant, otherwise the proposal will be non-compliant with fire-fighting requirements.
6. The installation and connection of a new water service to the existing public water reticulation system or the upgrading of an existing water service connection will be carried out after the consent holder has completed and submitted an 'Application for Water Supply' form to the Water and Waste Services Business Unit or an approved AWSCI, as per the Dunedin City Council Water Bylaw 2011. A quote for the required

work must be obtained from an approved water supply connection installer (AWSCI). The list of AWSCI's, application form and the full process can be found here <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.

7. Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
8. It is advised that any drainage issues and requirements (including the necessary works) will be addressed via the building consent process.
9. Any vehicle access from the carriageway to the property boundary is over road reserve and is to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Council's Transportation Operations Department).
10. This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of the access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
11. During the widening of Lyders Road, there is potential for surcharge loading as a result of sideling fill. If there are such fills, then slopes may not be filled steeper than 2H:1V(27°) without specific engineering design and construction.
12. Amendments to the existing road alignment may be required if the current "physical access outside the legal corridor" (Small's Corner) is required to be re-routed. Such work is likely to require excavation into the high side of the road, with associated retaining works.
 - All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s
 - Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.
13. The consent holder is to ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.
14. The following documentation is recommended as best practice guidelines for managing erosion and sediment -laden run-off and for the design and construction of erosion and sediment control measures for small sites:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).
15. It is advised that future earthworks are likely to require the following:
 - All walls retaining over 1.5m, or a surcharge / slope, including terracing, will require design, specification and supervision by appropriately qualified person/s;
 - Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be

- safely demolished following a complete design life without creating hazards for neighbouring properties;
- Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development;
 - Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction;
 - Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.
16. It is recommended that a formal agreement be drawn up between the owners and users of the access lots to clarify the responsibilities for the maintenance of the access lots.
17. It is advised that the vehicle access from the carriageway to the property boundary is over road reserved and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).
18. It is advised that Lot 2 is situated in an urban landscape conservation area, and once a design for any new building on this site has been finalised, resource consent will be required as a controlled activity. Council's control is restricted to the location, design and appearance of the structure. Council's Landscape Architect recommends that a new dwelling on Lot 2 be of modest scale.