

12 January 2017

JNA Broekhuysen & SR Broekhuysen
C/- Paul Haddon
Terramark Ltd
PO Box 235
Mosgiel 9053

Dear Paul

RESOURCE CONSENT APPLICATION: **SUBDIVISION:** **SUB-2016-98**
LAND USE: **LUC 2016-496**
243 & 243A SADDLE HILL ROAD
SADDLE HILL

Your application for the subdivision of 243 and 243A Saddle Hill Road, Saddle Hill, into two lots, and land use consent for the containment of an existing dwelling on a new undersized Rural-zoned Lot 2 and bulk and location breaches of an existing accessory building on Lot 1, was processed on a notified basis in accordance with 95A to 95G of the Resource Management Act 1991. No submitters wished to be heard in respect of the application and therefore, pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager under delegated authority on 12 January 2017.

I advise that the Council has **granted** consent to the application. The decision is outlined below, and the consent certificate (including relevant conditions and advice notes) is attached to this letter.

BACKGROUND TO APPLICATION

The subject site is a rural property situated on Saddle Hill between, and to the south of, the two peaks which give the hill its name. The site is an irregular shaped property with frontage to unformed legal road along its northern boundary, and access to Saddle Hill Road via right of way over 245 Saddle Hill Road. The subject site is legally described as Lot 5 Deposited Plan 317701, held in Computer Freehold Register 69457, and has an area of 34.1189ha.

The site was created by the subdivision of 119 Main South Road, issued subdivision consent RMA 2002-0124 (now renumbered RMA-2002-365753) on 27 June 2002. The subdivision consent established a building platform on new Lot 5 (the subject site) to address geotechnical and landscape matters, and a house was subsequently built on this building platform in accordance with building consent ABA-2005-308529 in 2005.

Land use consent LUC-2014-413 for a second dwelling within the same building platform was then issued on 9 September 2014. The consent was processed on a non-notified basis as a controlled activity. The house was built in accordance with ABA-2014-1357 within the landscape building platform.

DESCRIPTION OF ACTIVITY

The applicant now seeks to subdivide the subject site so as to establish each existing residential unit on its own site. Proposed Lot 1 will be a site of 33.29ha containing the first

dwelling. It will utilise the existing access to Saddle Hill Road, and will include all of the frontage to the unformed legal road.

Proposed Lot 2 will be a site of 8250m² containing the second dwelling. Access will be to Saddle Hill Road via the existing shared driveway and right of way. An additional right of way will need to be created over the shared length of driveway passing over proposed Lot 1.

REASONS FOR APPLICATION

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.

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.

The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

The site is zoned **Rural** in the Dunedin City District Plan. The houses are within the **Saddle Hill Landscape Conservation Area**. The general area is shown on the Hazards Register as **10116 – Land Stability (land movement)**, and **11589 – Land Stability (land movement)**. Portions of the site are shown as **11171 – Land Stability (land movement)**.

Rule 18.5.1(i) lists subdivision as a restricted discretionary activity in the Rural zone where the application complies with Rules 18.5.3 – 18.5.6, 18.5.9 and 18.5.10, and each resulting site is 15ha or greater. The proposed subdivision will create a site of less than 15.0ha. Accordingly, the subdivision is considered to be a **non-complying** activity pursuant to Rule 18.5.2.

Rule 6.5.2(iii) lists residential activity as a permitted activity at a density of one dwelling per site provided the site is not less than 15.0ha. The residential activity of proposed Lot 1 is therefore a **permitted** activity.

Rule 6.5.2(i) lists farming as a permitted activity for the Rural zone, and Rule 6.5.2(ix) lists accessory buildings for permitted activities to be permitted in their own right, subject to compliance with the performance criteria of Rule 6.5.3. The shed on proposed Lot 1 will fail to comply with the following:

- Rule 6.5.3(i)(b)(ii) specifies a yard of 6.0m for non-residential buildings which do not contain animals. The existing shed on proposed Lot 1 will be approximately 2.0m from the new boundary between Lots 1 and 2, therefore breaching the yard space by approximately 4.0m.

The shed of Lot 1 is therefore considered to be a **restricted discretionary** activity pursuant to Rule 6.5.5(i).

The residential activity of Lot 2 will be a **non-complying** activity pursuant to Rule 6.5.7(i) as the site is less than 15.0ha.

Although not strictly applicable for non-complying activities, the performance criteria of Rule 6.5.3 provide guidance as to acceptable use of the new sites. The proposal will fail to comply with the following:

- Rule 6.5.3(i)(b)(i) specifies side and rear yards of 40m for Rural properties. The existing house on proposed Lot 2 will be situated approximately 7.0m from the new boundary between Lots 1 and 2 to the northeast, therefore breaching the yard space by approximately 33.0m, and approximately 30.0m from the new boundary to the southeast, therefore breaching the yard space by approximately 10.0m.

Overall, the land use component of the application is considered to be a **non-complying** activity.

The Proposed Plan

The site is zoned **Rural – Coastal** in the proposed 2GP. It is part of a **Wahi Tupuna Site 55**. The majority of the site is part of the **Saddle Hill Significant Natural Landscape**, while the northeast section is within the **Saddle Hill Outstanding Natural Feature**. Much of the property is **Hazard 2 – Land Instability**.

Subdivision Activity:

Rule 16.3.5.1 lists general subdivision as being a restricted discretionary activity in the Rural zones, subject to compliance with the performance standards. Rule 16.7.4 is in effect and sets the minimum site size for the Rural – Coastal zone as 40.0ha. The new sites will fail to meet these minimum site sizes. Accordingly, pursuant to Rule 16.7.4.3, the subdivision is a **non-complying** subdivision. This rule is in effect.

Land Use Activity:

Rule 16.3.3.23 lists standard residential activity as being a permitted activity in the Rural zones subject to compliance with the performance standards. Rule 16.5.2 sets a minimum site size of 15.0ha for the first residential unit on a site. Accordingly, the existing residential activity to be established on Lot 2 will be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect.

Summary

The application was lodged on 13 October 2016, after the close of submissions on the Proposed Plan. The Rural zone rules are subject to submissions and could change as a result of the subdivision process. However, Rule 16.7.4 (regarding minimum site size for Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules are not relevant to the activity status of the application as determined at the time of lodgement except for the rule regarding minimum lot size of a Rural-zoned property.

The activity status of the proposed subdivision is therefore determined by the Dunedin City District Plan and the Proposed Plan, and is considered to be a **non-complying** activity. The activity status of the land use activity for Lots 1 and 2 is therefore determined by the Dunedin City District Plan and is considered to be a **non-complying** activity.

At the time of issuing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sites has been given effect, and is applicable to this application, but is subject to submissions. All other relevant rules are not in effect and are also subject to submissions. The rules 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 application except for the minimum site size rule which needs to be weighted accordingly.

NES Soil Contamination Considerations:

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.

The applicant's agent has had a search of Council records undertaken as HAIL 2016-102 with regard to the house sites. The applicant's agent has commented in an email dated 12 January 2016:

'On review of the results of the HAIL-2016-102 property search attached we do not believe the site has ever been, or was likely to have been, used for a hazardous activity or industry.'

'As such we do not believe this proposed subdivision (SUB-2016-98) evokes the NES.'

Pursuant to Regulation 8(c) the NES is applicable if the subdivision proposal subdivides land in a way that causes the piece of land to stop being productive land. No change in use or new residential use is anticipated. This balance of the property is farm land that will continue to be productive farm land. As such, the proposed subdivision is not considered to be subject to the NES.

PLANNING ASSESSMENT

Affected Persons

The application submitted was accompanied by the written approval of the persons listed in the following table. In accordance with section 104 of the Act, where written approval has been obtained from affected parties, the consent authority cannot have regard to the effect of the activity on that person.

Person	Owner	Occupier	Address	Obtained
Heather Margaret McLean	*	*	245 Saddle Hill Road	26 September 2016
Stephen Francis Finnie	*		50 Finnie Road	1 September 2016
Nicole Victoria Maria Broekhuyse		*	243A Saddle Hill Road	5 September 2016
Douglas Stuart Allen		*	50 Finnie Road	3 September 2016

Notification

The proposed subdivision will create an undersized Rural lot under the Dunedin City District Plan rules, and two undersized lots under the Proposed Plan rules. The proposal will also establish an existing residential unit on a new undersized site. As such, the proposal has the potential for adverse effects on the environment which are more than minor, and could challenge the integrity of the District Plan. Accordingly, a decision was made to notify the application. A sign was placed at the entrance of the subject site (on Saddle Hill Road) and an advertisement was placed in the Otago Daily Times on 3 November 2016.

One submission was received following notification. In addition, the Otago Regional Council advised that it would not be formally submitting. The one submission received was neutral in its stance, and is summarised in the table below.

Submitter	Support / Oppose	Reasons for submission	Wish to be heard?
Lucy and Simon James Knott	Neutral	• Submitter commends the Council for identifying them as an affected party. • Submitters' property one of four using the one access, and considered themselves to be	No.

		affected. • Second dwelling has already been built at 243A Saddle Hill Road. • Submitters' interest is in protecting the shared driveway with establishment of maintenance duties and cost sharing equally between the four properties. • Does not object to the two-lot subdivision, but has concerns about the applicant acquiring more land so that they could built a third dwelling utilising the existing access. Want duties addressed now on new titles by agreement of all parties. • Submitters' also considering their future options; suggests that if consent granted, Council should expect to receive many more such applications, including the submitters'. Would expect their application to be granted as a precedent will have been set. • Requests that access rights, conditions and maintenance requirements are registered against the title of 243A Saddle Hill Road.	
--	--	---	--

Hearing

The interested Council departments did not identify any effects of the proposal which would be more than minor. The Processing Planner spoke with Mr Knott by phone and discussed the matters raised in the submission regarding the use and maintenance of the right of way which are already addressed through the Property Law Act 2007. The submitter did not wish to speak at a hearing. Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary, as is provided for by Section 100 of the Resource Management Act 1991.

Effects on the Environment

The following assessment of effects on the environment has been carried out in accordance with section 104(1) of the Resource Management Act 1991. It addresses those assessment matters listed in sections 6.7 and 18.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan, considered relevant to the proposed activity, and is carried out on the basis that the environment is the rural slopes of Saddle Hill Road. The subject site has a southeast aspect. There is a quarry situated to the northwest, and pastoral farmland on all other sides.

Any actual or potential effects on the environment of allowing this proposal to proceed will be no more than minor for the following reasons:

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

The subject site is a 34ha property with two residential units on-site. The second residential unit was built in 2014, and was issued consent as a controlled activity under both the Rural-zone rules (Rule 6.5.4(v)) and the Landscape rules (Rule 14.6.1(a)). The Council has no scope to decline a controlled activity as the activity is anticipated by the District Plan and can therefore proceed, but control over specific aspects is retained by the Council. The density of development for this land is therefore established.

In this case, the second residential unit was constructed within the same landscape building platform (as determined by a consent notice on the title) as the original house, meaning that the two houses are in relatively close proximity. They are separated by approximately 74m, and are served by the same access. The proposed subdivision seeks to place each of the two houses onto its own title, meaning that the new boundary passes between the houses, and the sizes of the new lots are determined accordingly.

Proposed Lot 1 will be a large site of 33.29ha containing the original house and the full length of the driveway up to the commencement of the right of way through 245 Saddle Hill Road. Proposed Lot 2 will be a very small Rural-zoned site of 8250m². Access to Saddle Hill Road will be via the same driveway to proposed Lot 1, utilising rights of way where necessary.

Lot 1 is large enough for further development with another residential unit as a controlled activity, or subdivision under the current Plan rules as a restricted discretionary activity (both situations requiring at least 30ha within the subject site). Further residential development or subdivision of this land is considered undesirable given that Lot 1 will only be larger than 30.0ha because proposed Lot 2 will be significantly undersized, and because the maximum development potential of the land prior to subdivision (one house per 15.0ha) has already been reached with the giving effect of LUC-2014-413. It is therefore appropriate that a consent notice be placed on the title of Lot 1 restricting further subdivision or development for the purpose of creating an additional site or residential unit. The applicant has proposed a condition to this effect.

Further development of proposed Lot 1 is not anticipated under the Proposed Plan rules which specify a minimum site size of 40.0ha (thereby requiring 80.0ha for subdivision to proceed). However, although this rule is in effect, it is not operative and is subject to submissions. Therefore, it could change before becoming operative. The consent notice as recommended above is therefore still appropriate.

Both proposed Lots 1 and 2 will have established residential units. Proposed Lot 1 will contain the majority of the subject site land, and will therefore continue to function as a rural property more or less as at present. Lot 2 will be very small for a rural site, and will be a residential property with little or no associated productive farming worth. No further development is anticipated for either new lot. Accordingly, there is no expectation that the proposed subdivision will create any site having physical limitations rendering it unsuitable for future use.

2. Easements (18.6.1(i))

The subject site has a number of existing easements and encumbrances listed on its title. The first is a Land Improvement Agreement **741160** which is a 1989 document between the Otago Catchment Board and an underlying landowner. The agreement is in regard to the control of erosion and the conservation of the soil of the land, but only applies to that land of the underlying title CFR 91670 (i.e. almost all of the site except for a section next to the unformed legal road). This document should pass down onto both new titles but possibly only has relevance to proposed Lot 1.

There is an existing easement in gross, Easement Instrument **5793593.13**, to convey electricity and to establish and maintain electricity transformers and ancillary equipment which passes over the extreme eastern corner of the subject site. This will pass down automatically onto the title of proposed Lot 1 and will have no consequences for this subdivision.

Easement Instrument **5793593.14** provides the subject site with rights of way over 245 Saddle Hill Road. This is the existing access to Saddle Hill Road for both houses, and will continue to serve as access for both proposed Lots 1 and 2. This easement instrument also created service easements for electricity and telecommunications, passing over 275 Saddle Hill Road (the quarry site) and the extreme southwest corner of 245 Saddle Hill Road. These easements will continue to serve both proposed Lots 1 and 2.

Consent notice **5793593.7** establishes the landscape building platform on the subject site and requires any dwelling to be fully located within this building platform. The platform is a large area at the northwest end of the subject site, and both houses have been constructed within this platform. The consent notice also requires the owners to manage areas of instability on their allotment in accordance with a Land Management

Plan attached to the title. This requires the planting of 'old debris slides' within the subject site. The consent notice is not clear where these slides are situated, but it appears that they will be within Lot 1 after subdivision. Other requirements of the consent notice are in regard to access, and have limited application to this site or proposed subdivision. The consent notice can be cancelled in respect of the subject site only, and the conditions re-imposed as a new consent notice in a slightly different format as appropriate for the respective new lots.

Easement Instrument **5793593.15** imposed a land covenant on all the lots of DP 317701. This specifies development controls for the sites, and is a private agreement between parties. Council does not administer this land covenant in any way, and cannot cancel it or change it. It will pass down onto both new titles.

New easements required as part of this subdivision include rights of way over Lot 1 in favour of Lot 2, in order for Lot 2 to be able to use the existing driveway. Also required will be service easements over Lot 2 in favour of Lot 1, to connect to the existing easements over neighbouring land.

3. Infrastructure (18.6.2(d), (e), (i), (j), (n), (o), and (p)), and Sediment and Effluent Discharges (17.8.6)

The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She advises that there are existing dwellings on Lots 1 and 2 which are both fully serviced. The Water and Waste Services Business Unit has no requirements for subdivision.

4. Hazards (18.6.1(t)) and Earthworks (17.8.1)

Council's Consulting Engineer, MWH, has considered the application. He notes that there are two existing houses, and that the proposal is unlikely to result in any additional construction. The building platform is in a sensible flat location, distant from any features of possible prior movement. The dwelling on proposed Lot 1 is 80m upslope of an obvious scarp associated with a large flow slide. The Consulting Engineer does not see any issues with the application from a natural hazards perspective, and had no recommendations for consent.

5. Transportation (18.6.1(c)) and Effects on Transportation Network (17.8.5)

The Transportation Planner, Transportation Operations, has considered the application. He notes that Saddle Hill Road is a Local Road in the District Plan roading hierarchy.

The Transportation Planner notes that access to both lots will be via the existing entrance from Saddle Hill Road and the existing rights of way over 245 Saddle Hill Road. As each proposed lot already contains a dwelling, the subdivision is not anticipated to create any additional traffic movements to and from the site. Given that there will be essentially no change with regard to the use of the vehicle access as a consequence of the proposed subdivision, the existing access provisions are considered to be acceptable for use of Lots 1 and 2.

The Transportation Planner comments:

'A submission has raised maintenance responsibilities with regard to the rights of way within the site. It should be noted that maintenance of right of way easements is a civil matter between owners/users of such easements, pursuant to Schedule 5 of the Property Law Act 2007, and is not a matter that can be dealt with under the subdivision consent process. We do, however, advise owners/users of rights of way to enter into a private agreement with regard to future maintenance.'

It is considered that there is ample space provided within each lot to provide for the parking needs of each dwelling, and to provide on-site manoeuvring so that vehicles are able to drive on and off the site in a forwards direction.

In conclusion, Transport considers that the proposed subdivision will have negligible effect on the transportation network, subject to advice regarding maintenance agreements and future development on the new lots.

The submitter also expressed concern that there might be a boundary adjustment between proposed Lot 1 and a neighbouring property in the future which would mean further development or subdivision could be undertaken in accordance with the District Plan and Proposed Plan rules. It should be noted that the existing right of way over 245 Saddle Hill Road is in respect of the land of Lot 5 DP 317701 (the subject site). Should there be a future subdivision proposal which seeks to include land from outside the boundaries of Lot 5 DP 317701 (i.e. neighbouring land), it should be noted that the neighbouring land, or any development on this land, has no entitlement to use the right of way.

6. Bulk and Location (6.7.9)

The two houses on the subject site are existing structures which have been lawfully established, and comply with the bulk and location requirements of the District Plan in respect of the existing external boundaries of the property. The proximity and position of the two buildings are now well-established.

The proposed subdivision will introduce a new boundary between the houses. As such, the house on proposed Lot 2 will be within 40.0m of the new boundary, and will have yard breaches of varying amounts up to approximately 33.0m. The existing accessory building on proposed Lot 1 will also be closer to the new boundary than the District Plan anticipates. The effects of these yard breaches will be entirely confined to the subdivision, and as the two houses are existing structures, the effects are already established. Accordingly, the proposed yard breaches are acceptable.

7. Landscape (18.6.1(a))

Council's Landscape Architect has visited the site and considered the proposal. He notes that he visited the site at the time of consent for the second dwelling, to assess the effects of the house on the values of the Saddle Hill Landscape Conservation Area (LUC-2014-413), and later to assess the effects of a wind turbine (LUC-2014-457). The Landscape Architect notes that the effects of the proposed subdivision will have new effects on the landscape that are negligible. No new development is proposed, and the subdivision represents a rationalisation of the underlying cadastral arrangement to reflect the existing occupation. The Landscape Architect recognises that there is potential to further subdivide proposed Lot 1, but the applicant has proposed a condition to prevent this occurring.

The Landscape Architect comments:

'As it happens, recent changes have had little more than localised effects in any case. Although the site is reasonably elevated and close to the centre of the distinctive two mounds of Saddle Hill, there are topographical elements which help visually screen a second dwelling and a small scale wind turbine. The site aspect is towards the coast to the south and south east, so that Jaffrays Hill and the larger dome of Saddle Hill totally screen any views from the north and west (North Taieri plains and Saddle Hill Road). Even the views from Brighton Road and any of the little settlements dotted along the coast are blocked out because of the slope of the intervening hill and several stands of trees which provide almost complete screening.

'Another site feature which provides an advantage for reducing visibility from nearly all but very local views is the relative flatness of the site at the second house site. This, along with stands of trees in the middle distance

means that although this is an elevated site, it is very well screened by existing natural elements.'

The Landscape Architect notes that it would have been preferable from the perspective of an effects assessment to have considered the subdivision proposal at the time of establishing the second dwelling. However, in terms of preserving the features and characteristics of the landscape conservation area, this subdivision rationalisation will have no more than a minor effect on landscape values as long as no further subdivision occurs in the surrounding setting.

8. Amenity Values

One means by which the District Plan maintains the amenity values of an area is through the density provisions of the District Plan. In this case, the subject site has 34.1189ha of land, and could be subdivided into two lots of 15.0ha or larger. Two houses have already been built on the property, therefore achieving the maximum development potential for this land under the rules of both Plans. Although the Proposed Plan sets a minimum site size of 40.0ha, only 15.0ha is required for the first house to be built on a site. The present density of development is therefore acceptable.

The proposed subdivision will not change the density of existing development although there will be a significantly undersized lot created. No new development is proposed as part of this application. However, because Lot 2 will be so small, it will be necessary to place restrictions on the future development and/or subdivision of Lot 1 to prevent additional development which would otherwise be in accordance with District Plan expectations.

As there will be no physical change to the occupation of the land occurring, and no potential for further subdivision and/or development, the proposed subdivision is considered to maintain the amenity values of the Rural zone and landscape conservation area.

CONSENT DECISION

Subdivision SUB-2016-98

*That pursuant to section 34A(1) and 104B and after having regard to Part II matters and section 104 and 104D of the Resource Management Act 1991, the Dunedin City District Plan and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of the land at 243 and 243A Saddle Hill Road, Saddle Hill, being the land legally described as Lot 5 DP 317701 (CFR 69457), into two lots, subject to the following conditions imposed under sections 108 and 220 of the Act as shown on the attached certificate.*

Land Use LUC-2016-496

*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 establishment of the existing residential activity on new undersized Lot 2 SUB-2016-98, and the existing accessory building on Lot 1 SUB-2016-98 with bulk and location breaches, at 243 and 243A Saddle Hill Road, Saddle Hill, subject to the conditions imposed as shown on the attached certificate.*

REASONS

Effects

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and are outlined above. It is considered that the proposed activity will have no more than minor adverse effects on the environment.

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan were taken into account in assessing the application. The proposal has been assessed against the relevant provisions identified through Section 4 (Sustainability), Section 6 (Rural), Section 8 (Residential), Section 14 (Landscape), Section 20 (Transportation), and Section 21 (Environmental Issues).

The proposal is considered to be consistent with the following objectives and policies of the District Plan:

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability Section)** seek to maintain and enhance the amenity values of Dunedin.
- **Objective 6.2.2 and Policy 6.3.5 (Rural Section)** seek to maintain and enhance the amenity values associated with the character of the rural areas.
- **Objective 18.2.1 and Policy 18.3.1 (Subdivision Section)** seek to ensure that subdivision activity takes place in a coordinated and sustainable manner.
- **Objective 20.2.2 and Policy 20.3.4 (Transportation Section)** seek to ensure that land use activities are undertaken in a manner, which avoids, remedies, or mitigates adverse effects on the transportation network.
- **Objective 20.2.4 and Policy 20.3.6 (Transportation Section)** seek to maintain and enhance a safe, efficient and effective transportation network.

Proposed Plan

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

- **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.
- **Objective 16.2.1 (Rural Section)** seeks to reserve rural zones for productive rural activity and the protection and enhancement of the natural environment.
- **Policy 16.2.1.5 (Rural Section)** seeks to limited residential activity in the rural zones at a level (density) that supports farming activity.
- **Objective 16.2.3 and Policy 16.2.3.2 (Rural Section)** seeks residential activity at a density that maintains the rural character values and visual amenity of the rural zones.
- **Policy 16.2.3.8 (Rural Section)** seeks to only allow subdivision where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.

The proposal is consistent with the relevant policy provisions above.

Section 104D

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. In my opinion, the proposed subdivision of two existing houses onto separate sites will not have adverse effects which are more than minor, and will not be 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

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 case, the proposed subdivision will create one significantly undersized lot under the District Plan rules, and two undersized lots under the Proposed Plan rules. There are already two residential dwellings on the subject site, and no new development is proposed.

The application was notified and no submitters identified any concerns about Plan integrity or the proposal generally. It is considered that, because the development is already in place and there will be no physical change to the land or increase in density occurring with the proposed subdivision, that the proposed subdivision is acceptable. Although the second house will be subdivided onto a very small site for the Rural zone, the size of the new lot is largely dictated by the shape of the subject site, the position of the house, and the extent of its curtilage. The small lot merely defines the actual area utilised by the house and its residents.

It is usually considered undesirable for houses in the Rural zone to be separated from the productive potential of the land by subdivision into very small rural sites. However, Rule 16.7.4.3 of the Proposed Plan anticipates that a surplus house can be subdivided from a farm onto a small site in certain circumstances. This proposal does not meet those circumstances, and the rule is not operative, but this proposal is essentially in line with the intent of that rule. Accordingly, the Council is satisfied that there is a true exception to this particular subdivision proposal which will allow the granting of consent without setting an undesirable precedent.

Part II Matters

The proposed activity has also been assessed in terms of Part II matters of the Resource Management Act 1991. For the reasons outlined above, the proposed activity is considered consistent with section 5(2)(c); "Avoiding, remedying, or mitigating any adverse effects of activities on the environment", section 7(c) "The maintenance and enhancement of amenity values" and section 7(f) "The maintenance and enhancement of the quality of the environment."

RIGHTS OF OBJECTION

In accordance with section 357 of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
P O Box 5045
Dunedin 9058

Attn: Senior Planner- Enquiries Plaza, Ground Floor.

Yours faithfully

Alan Worthington
Resource Consents Manager

Consent Type: Subdivision & Land Use

Consent Number: SUB-2016-98 & LUC-2016-496

Location of Activity: 243 & 243A Saddle Hill Road, Saddle Hill.

Legal Description: Lot 5 DP 317701 (CFR 69457).

Lapse Date: 12 January 2022, unless the consent has been given effect to before this date.

Subdivision SUB-2016-98

*That pursuant to section 34A(1) and 104B and after having regard to Part II matters and section 104 and 104D of the Resource Management Act 1991, the Dunedin City District Plan and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of the land at 243 and 243A Saddle Hill Road, Saddle Hill, being the land legally described as Lot 5 DP 317701 (CFR 69457), into two lots, subject to the following conditions imposed under sections 108 and 220 of the Act as follows:*

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Terramark, entitled, 'Lots 1 & 2 being a Proposed Subdivision of Lot 5 DP 317701,' and the accompanying information submitted as part of SUB-2016-98 received at Council on 13 October 2016, except where modified by the following:*
2. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.*
 - b) *That a right of way shall be duly created or reserved over Lot 1 in favour of Lot 2, and shall be shown on the survey plan in a Memorandum of Easements. The right of way shall have a minimum legal width of 4.0m.*
 - c) *That services easements shall be duly created or reserved over Lot 2 in favour of Lot 1 as necessary, and shall be shown on the survey plan in a Memorandum of Easements.*
3. *That prior certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *That consent notice 5793593.7 shall be cancelled in respect of Lot 5 DP 317701 only.*
 - b) *That a plan shall be prepared for Lots 1 and 2 showing the position of the present landscape building platform (as defined by the Geolink Land Investigations plan currently attached to consent notice 5793593.7) and the new boundaries of Lots 1 and 2. The platform shall be labelled as a landscape building platform. There shall be a note on the plan to the effect that, notwithstanding the dimensions of the platform/s as shown, any future development of Lot 1 or 2 shall maintain the yard spaces as specified for the relevant zone in the Dunedin City District Plan and/or Proposed Plan (as applicable at the time) unless further resource consent*

is obtained for a yard breach. The plan shall be attached to the consent notices of conditions 3(d) and 3(e) below.

- c) That the Geolink Land Investigations report attached to the consent notice of 5793593.7 shall be attached to the consent notice of condition 3(d) below.
- d) That a consent notice shall be prepared for registration on the title of new Lot 1 for the following on-going conditions:

'That any residential building (including residential accessory buildings) shall be wholly located within the building site identified as the "Landscape Building Platform" as shown on the attached plan, except that, notwithstanding the dimensions of the platform as shown, any future development of Lot 1 shall maintain the yard spaces as specified for the relevant zone in the Dunedin City District Plan and/or Proposed Plan (as applicable at the time) unless further resource consent is obtained for a yard breach.'

'That the landowners shall manage areas of instability within this lot as per the recommendations of the Land Management Plan prepared for Lot 5 DP 317701 as outlined in the attached Geolink Land Investigations Report.'

'There shall be no further subdivision of this site so as to create an additional site suitable for the establishment of a new residential activity. Likewise, there shall be no establishment of a second residential unit on the un-subdivided site. This restriction on subdivision and residential development seeks to maintain the overall density of residential development across the sites of CFRs ... and ... at not more than one residential dwelling per 15.0ha.'

The CFR numbers to be inserted into this consent notice, when known, will be the new titles of Lots 1 and 2 SUB-2016-98.

- e) That a consent notice shall be prepared for registration on the title of new Lot 2 for the following on-going condition:

'That any residential building (including residential accessory buildings) shall be wholly located within the building site identified as the "Landscape Building Platform" as shown on the attached plan, except that, notwithstanding the dimensions of the platform as shown, any future development of Lot 2 shall maintain the yard spaces as specified for the relevant zone in the Dunedin City District Plan and/or Proposed Plan (as applicable at the time) unless further resource consent is obtained for a yard breach.'

Land Use LUC-2016-496

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 establishment of the existing residential activity on new undersized Lot 2 SUB-2016-98, and the existing accessory building on Lot 1 SUB-2016-98 with bulk and location breaches, at 243 and 243A Saddle Hill Road, Saddle Hill, subject to the conditions imposed as follows:

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Terramark, entitled, 'Lots 1 & 2 being a Proposed Subdivision of Lot 5 DP 317701,' and the accompanying information submitted as part of LUC-2016-496 received at Council on 13 October 2016.*

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. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
4. 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.
5. It is recommended that the owners and occupiers of all properties using the shared access to Saddle Hill Road enter into a formal agreement in order to clarify maintenance responsibilities for the rights of way.
6. It is advised that the existing right of way over 245 Saddle Hill Road is in respect of the land of Lot 5 DP 317701 (the subject site). Should there be a future subdivision proposal which seeks to include land from outside the boundaries of Lot 5 DP 317701 (i.e. neighbouring land), it should be noted that the neighbouring land, or any development on this land, has no entitlement to use the right of way.

Issued at Dunedin this 12 January 2017.

Alan Worthington
Resource Consents Manager

COPY OF PLAN: Not to scale.

