



Report

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 3 August 2017

SUBJECT: **RESOURCE CONSENT APPLICATIONS:**
SUBDIVISION SUB-2017-5
LAND USE (Lot 1) LUC-2017-52
LAND USE (Lot 2) LUC-2017-236
25 ASHTON STREET
MOSGIEL

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 3 August 2017. 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] Council has received an application to subdivide the land at 25 Ashton Street, Mosgiel, into two lots, with residential activity to be established on both new sites. The subject site is legally described as Lot 1 Deposited Plan 304960, held in Computer Freehold Register 20454, and has an area of 9.5836ha. The subject site is a rural property situated at the urban edge of Mosgiel. It is almost perfectly square, and is more or less level. The property has frontage to the end of Ashton Street at its southeast corner, and a driveway extends from the road formation in a westerly direction across the subject site to an existing dwelling in the northwest segment of the property. The dwelling is an historic home situated within a mature garden. The property features a number of trees listed in the District Plan schedule of significant trees located in the vicinity of the house. There are sheds situated not far from the house, within 40.0m of the northwest property boundary.
- [3] The subject site abuts 18 residential properties along its northeast boundary. In all cases except that of 23 Ashton Street, the common boundary is the rear boundary. In the case of 23 Ashton Street, the common boundary is a side boundary. The northwest and southwest boundaries abut a rural neighbour and the land is used for paddocks or nursery plantings.
- [4] The southeast boundary of the subject site abuts the Main South Railway Line. The railway corridor is approximately 55.0m wide, with the railway line itself approximately 47.0m from the boundary. There are several large industrial buildings and areas for storage and parking situated between the railway line and the subject site. Running alongside this boundary, and within the subject site itself, is the Owhiro Stream.
- [5] The proposed subdivision has been revised since the original application of 3 February 2017. The proposal, as submitted to Council on 1 May 2017, now involves the creation

of two new lots. Proposed Lot 1 will be an 'L' shaped parcel of 6.03ha which contains most of the land except for that in the northwest corner of the subject site. Lot 1 will have the full length of frontage to the end of Ashton Street, and will own approximately 160m of the existing driveway. The lot is currently vacant land, but the applicant seeks to establish a 20.0m by 40.0m building platform suitable for development with a residential dwelling in the southern portion of the lot. The platform is shown 50.0m from the end of Ashton Street and 40.0m from the railway boundary. As such, it is to the south of the existing driveway. The building platform is to have a separate driveway (shown branching off the existing driveway almost immediately once inside the property).

- [6] Proposed Lot 2 will be an almost rectangular site of 3.55ha. It will be situated in the northwest corner of the subject site, and will contain all the existing buildings. It will obtain access to Ashton Street via the existing driveway, utilising a right of way easement where the driveway passes through proposed Lot 1.

3. ACTIVITY STATUS

- [7] 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.
- [8] 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.
- [9] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

The subject site is zoned **Rural** in the Dunedin City District Plan. The general area is identified as being subject to land stability, seismic and flooding risks. The existing house is listed in Schedule 25.1 as **B633 – Johnstone Farmhouse** (Heritage NZ Register 7146). There are a number of trees on-site listed in Schedule 25.3 being **T95- 99, 1209 & 1210**. The subject site has **High Class Soils**.

Subdivision Activity:

- [10] 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 15.0ha or greater. The proposed subdivision will create two Rural-zoned lots of less than 15.0ha. Accordingly, the proposed subdivision is considered to be a **non-complying** activity.

Land Use Activity:

- [11] Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site as being a permitted activity, provided that the minimum area of the site is no less than 15ha. The future residential dwelling of proposed Lot 1 and the existing residential dwelling of proposed Lot 2 will be on sites of less than 15.0ha and are considered to be **non-complying** activities pursuant to Rule 6.5.7(iii).

The Proposed Plan

- [12] The subject site is zoned **Rural – Taieri Plains**. The land has **High Class Soils**. The general area has a **Hazard 3 – Flood** risk and it is part of a **Wahi Tupuna Site**. The house is a listed heritage building **B633**, and the above trees are also listed in the Proposed Plan. As the Owhiro Stream runs through the southern margin of the site, it is subject to an Esplanade Reserve requirement and designation **D218 (Otago Regional Council)** of the East Taieri Drainage Scheme.

Subdivision Activity:

- [13] Rule 16.3.5.1 specifies that subdivision is a restricted discretionary activity in the Rural zones, subject to compliance with the performance standards. The proposed subdivision will fail to comply with Rule 16.7.4.1(g) which sets the minimum site size for the Rural – Taieri Plains zone at 40.0ha.
- [14] While the Rural Section rules of the Proposed Plan are subject to submissions, and therefore have yet to be finalised, Rule 16.7.4 (minimum site size for rural zones) and Rule 16.9.5.5 (assessment of subdivision performance standard contraventions – minimum site size) were given immediate legal effect pursuant to section 86D of the Resource Management Act 1991 at the time of notification. This direction was sought from the Court because the Council has significant concerns with the subdivision of rural land, and the potential consequences of development in anticipation of more restrictive rules for subdivision. Accordingly, the non-compliance of the subdivision proposal with Rule 16.7.4 results in an activity status of **non-complying** pursuant to Rule 16.7.4.3.

Land Use Activity:

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

Land Use Activity:

- [16] Rule 16.3.3.23 specifies that residential activity is permitted in the Rural zones, subject to the performance standards. Rule 16.5.2.1(g) specifies that the first residential activity on a rural site in the Rural – Taieri Plains zone requires 25.0ha of land for it to be a permitted activity. The new lots are both smaller than 25.0ha; therefore, the future residential activity of Lot 1 and the existing residential activity of Lot 2 are considered to be non-complying activities pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

Development Activity:

- [17] Lot 2 is already developed and a new residential activity is anticipated in the location of the proposed building platform on Lot 1. Rule 16.3.4.5 lists the construction of new buildings greater than 60m² as being a permitted activity in the rural zones, subject to the performance standards. On the basis of the information available, it is anticipated that the development of a proposed dwelling on Lot 1 will be a permitted activity as the bulk and location rules can be achieved by a dwelling of conventional size and scale located within the defined building platform.

Overall Proposed Plan Status:

- [18] Having regard to both the land use and development activity components under the Proposed Plan, the future residential activity of Lot 1 and the existing residential activity of Lot 2 are considered to be non-complying activities.

Summary

- [19] The application was lodged on 3 February 2017, after the close of submissions on the Proposed Plan. The residential and rural zone rules are subject to submissions and

could change as a result of the submission process. As such, they are not relevant to the determination of the activity status of the application. However, Rule 16.7.4 (regarding minimum site size for Rural-zoned land) is in effect and is relevant.

- [20] The activity status of the proposed subdivision is therefore determined by both the Dunedin City District Plan and the Proposed District Plan (2GP), and is considered to be a **non-complying** activity. The activity status of the residential activity Lots 1 and 2 is determined by the Dunedin City District Plan, and is also considered to be a **non-complying** activity.
- [21] At the time of assessing this subdivision decision, the Proposed District Plan rule regarding minimum site size for Rural sites is in 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. All these 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:

- [22] 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.
- [23] The applicant's agent has had a search of Council records undertaken (HAIL-2017-48). The HAIL report notes that the subject site could be considered a HAIL site under category A10: Persistent pesticide bulk storage or use including sports turfs, market gardens, orchards, glass houses or spray sheds. The property was used as a market garden for approximately 40 years up to 2000, which is when it was subdivided into 25 Ashton Street and 27 Ingles Street. Evidence suggests that the land now 27 Ingles Street was more intensively used as a market garden than the subject site of this application.
- [24] The applicant's agent advises that the paddock containing the proposed building platform has always been used for grazing or large-scale cropping. The evidence from the aerial photographs and the property owner's information is that the intense 'market garden' activity was confined to certain areas, but not the building platform area. The applicant's agent comments:
- 'The market garden activity was undertaken on the basis that the 'produce' was marketed as "organically grown". This limited the chemicals that could be used to manage pests and weeds, and to fertilize the soil. No aerial spraying or application has ever been undertaken and no evidence (photographic or anecdotal) exists that the land in the vicinity of the building platform has ever managed as an intensive market garden plot.'*
- [25] The applicant intends to have the building platform soil tested for contaminants and has hired a consultant to prepare a preliminary site investigation. At the time of writing this report, the preliminary site investigation is incomplete. Even so, the applicant's agent believes that it is highly unlikely that the soils at the proposed building site contain any chemical or material that could be harmful to human health.

The preliminary site investigation should be available for the Council by the time of the hearing.

- [26] The balance of the subject site is used either for a well-established residential activity or is productive land. The subdivision proposal will not change the use of this land in a way that stops the land being productive land or increases the risk to human health. On the basis of information currently available, it is believed that the site is not a HAIL site and the NES is not relevant to this application. The soil sampling will provide some assurance that this is the case or consent for subdivision, change of use, and possibly disturbance of soils, under the NES might also be required.

4. NOTIFICATION AND SUBMISSIONS

- [27] Section 95A of the Act directs that a consent authority may notify an application if the effects on the environment are likely to be more than minor, the applicant requests public notification, or special circumstances may apply. In this case, the application was lodged as a non-notified application, but it was considered that the proposal could have significant effects or implications for the integrity of the District Plan. Accordingly, the Council required the application to be notified.
- [28] No affected party written consents were submitted with the application. The application was therefore publicly notified in the Otago Daily Times on 29 May 2017, and a sign was attached to the property's front fence. Copies of the application were sent to those parties whom the Council considered could be directly affected by the proposal.
- [29] Seven submissions were received following notification. One submission is in support, five submissions oppose the application, and one is neutral in its stance. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Robert Peter Ischia	Oppose in part	<ul style="list-style-type: none"> • Location of the building platform. • Application shows aerial view of site but no elevation. • Placing the building platform on the near-lowest point is very unwise. • Any driveway work near the entrance of Ashton Street will raise the ground level; water will bank up to the street during heavy rain. • Need to make sure that the subdivision does not inhibit water flow from Ashton Street but will enhance it. • There is already pressure on Owhiro Stream. 	Yes.
2. Brian Miller	Oppose	<ul style="list-style-type: none"> • Proposal is contrary to both the current District Plan and the Proposed Plan • Requests that the application be declined. 	No.
3. Frank Edward & Alison Janet North	Support	<ul style="list-style-type: none"> • Supports the application. 	No.
4. Andy Barratt	Oppose	<ul style="list-style-type: none"> • Opposes all parts of the application. • Represents Our Food Network Dunedin, an informal group promoting local food production. • Application will take high class soils in Rural zone out of productive use for residential development. • Requests application be declined. 	Yes.
5.	Neutral	<ul style="list-style-type: none"> • Category 2 historic place (ref 7146) – 	Yes.

Heritage New Zealand		<p>Johnstone Farmhouse.</p> <ul style="list-style-type: none"> • Farmhouse has historical significance in association with Todd family, pioneers of Taieri Plain and its development. • Andrew Todd Snr was involved in local affairs including Presbyterian Church and Otago Provincial Council 1860. • Farmhouse completed in 1861; mid-19th century domestic architecture using restrained Georgian symmetrical design. • Farmhouse on DCC Schedule 25.1; also listed trees on-site. • Proposed Plan lists house in Appendix A1.1. • Site within wahi tupuna area 56. No 'threats' to area are identified by Proposed Plan. • Heritage NZ considers proposed development will largely avoid archaeological and heritage sites. • Possibility of archaeological material being unearthed during works. • Offence to modify, destroy any archaeological site without prior authority of Heritage NZ. • Requests Archaeological Discovery Protocol be attached to consent. • Proposal will not result in any physical impacts on Johnstone Farmhouse or outbuildings. • Subdivision will result in reduction in rural character of site, and result in a greater level of domesticity to a historical working farm. • Activity should provide for an adequate setting for heritage item, to maintain its heritage significance. • Heritage NZ considers subdivision provides an appropriate setting for Farmhouse. Protected trees and garden retained with house. All within Lot 2. • Existing driveway with avenue of mature trees is to be retained. • Avenue aesthetically pleasing, a pleasant entrance to the farmhouse. Not the original entrance and does not contribute to heritage value. Heritage NZ does not have a strong view on driveway use. • Applicant promotes consent notice requiring maintenance and upkeep of homestead. • While the sentiment is supported by Heritage NZ, the consent notice approach has practical difficulties. • Would need to assess present state of house for baseline. Problems with monitoring and enforcing condition. • Recommends that owner commission a condition report or conservation plan. • Greater clarity needed over state of listed trees, monitoring and enforcement. • Effect of reduced rural character can be mitigated by consent notice prohibiting further subdivision or development of either lot. Heritage NZ supports this approach. • Requests that, if consent granted: <ul style="list-style-type: none"> - Further work with Heritage NZ on building and tree maintenance conditions (if Council considers appropriate). 	
----------------------	--	--	--

		<ul style="list-style-type: none"> - Consent notice prohibiting further subdivision of Lots 1 and 2. - Accidental discovery protocol be included as an advice notice. 	
6. Karen Patricia Warrington	Oppose	<ul style="list-style-type: none"> • Undersized lots seriously undermine integrity of both District Plans. • Proposed Plan increases lot sizes to prevent fragmentation of Rural zones. Subdivision goes against intent of Plan. • Undesirable precedent set when others seek to subdivide, whether than have a historic home or not. • Existing home already well protected and no need to subdivide to facilitate protection. • Believes subdivision will make the house more vulnerable to development around it. • Property as it exists today can continue to operate as a property that grazes sheep and cuts hay – true rural activities. • Protection of heritage home should not take precedence of protection of rural zones from fragmentation for future generations. • Undersized lots will detract from existing rural amenity. • If, for example, house burns down, then justification for subdivision is removed. • If owners were to sell after resource consent granted, application could be made to demolish house for residential development. • City would be left with fragmented rural land. • Heritage NZ website lists large numbers of heritage homes lost to developers. • The property was subdivided in 2003 under then current 6.0ha rule. Turned a productive and workable farm down to 9.5ha. Present application will further diminish size of productive land to suit current owner. • Proposed Plan notes principal functions of rural environment are for productive rural activities, and for provision of ecosystem services. • Subdivision into two very small rural lots erodes property’s ability to function as a farm, and makes it desirable to a developer. • Unconvinced purchaser of Lot 1 will want to build next to busy railway line. • Inquiries have cemented submitter’s view that proposed building site can be moved by new owners. • Unconvinced that someone will buy property which is too large for a few sheep and a couple of horses, and too small for a farm. • If current owners find it too difficult to manage property, they should consider selling rather than seek to do non-complying activity. Other people have to downsize properties they do not need or cannot manage. • If maintenance costs too expensive, then others sell their properties. • 949 Highcliff Road subdivision not comparable; balance land was a complying site. 25 Ashton Street enjoys existing use rights; it is not non-complying. • Other properties on Taieri Plain with historic 	No.

		<p>homes not listed. These owners could apply for heritage status in order to subdivide. Council would be unable to decline application due to precedent set.</p> <ul style="list-style-type: none"> • Applicant's view that no other historic homes in vicinity their view only. • Farmhouse not category 1 in Heritage NZ register; spurious to state home is of high value to City. • Farmhouse has been present 150 years but majority of public are unaware of it. Not open to public. Submitter is a neighbour and was not aware of it until application. Where is its value to City? • Open rural land to submitter's property a major selling point when purchased. Primary reason for buying property. • Spent a year looking for a property in Mosgiel. Rejected others for being jammed in, high fences, minimal privacy. Shaw Street properties enjoy rural vies and amenity of living on edge of Rural zone. • Only safe decision is for Hearings Committee to decline. • Heritage home currently well protected on existing site and existing use rights. • If granted, then anything is possible in future. A well-resourced and determined developer will push through development plans. • Conditions of consent do not offer genuine certainty to the proposal. Can be varied or removed. Even legal covenant cannot afford certainty as this would also be open to legal challenge. • Protection of heritage home should not trump District Plan rules to protect zone for all New Zealanders, now and into future. • Quotes Proposed Plan regarding key issues facing rural zone. 	
7. KiwiRail Holdings Limited (KiwiRail)	Oppose	<ul style="list-style-type: none"> • Submitting on location of proposed building platform on Lot 1. • Subject site adjoins Main South Line (MSL). KiwiRail has an interest in protecting operation and use of line. • Establishment of noise sensitive activity (dwelling) 40m from MSL corridor has potential for reverse sensitivity effects, and impact on operation of line. • KiwiRail not opposed to development adjacent to railway corridor, but it needs to be designed and constructed to ensure that reverse sensitivity effects are mitigated to the greatest extent practicable. • Application states KiwiRail requires a covenant registered on the title. At present time, covenant has yet to be agreed to. KiwiRail does not have the security required to alleviate the potential reverse sensitivity effects associated with the location of the proposed building platform on Lot 1. • KiwiRail seeks a condition for consent regarding building standard for dwelling. • KiwiRail holds no opinion in regard to Council delegating functions, powers and duties or 	Yes.

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [30] Section 104(1)(a) of the Act requires that the consent authority have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in the section 3 as including-
- a) *Any positive or adverse effect; and*
 - b) *Any temporary or permanent effect; and*
 - c) *Any past, present, or future effect; and*
 - d) *Any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
 - e) *Any potential effect of high probability; and*
 - f) *Any potential effect of low probability which has a high potential impact.*
- [31] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.
- [32] Neither the District Plan nor the Proposed Plan allows any subdivision to occur as of right. All subdivisions are either restricted discretionary activities where the proposal meets all District Plan requirements, or non-complying activities where the proposal does not. Council rarely declines consent for proposals that create new sites meeting the minimum lot size, access, servicing and other requirements of the District Plan. In such cases, the subdivision consent is a means of ensuring to Council's satisfaction that all necessary subdivision matters, e.g. infrastructure, are adequately addressed, and is not an indication that Council is assessing whether or not the subdivision should proceed.
- [33] In this case, the proposed subdivision is a non-complying activity under the rules of both the District Plan and Proposed Plan because of the undersized nature of the Rural-zoned lots. No subdivision of this land into lots of the sizes proposed is anticipated under the rules of either Plan.
- [34] In regards to the proposed land use for the new lots, only the District Plan rules are in effect or operative in respect of the zoning. While residential activity is an expected component of the Rural zone, only one dwelling per site is permitted, and no dwellings can be established on Rural-zoned sites less than 15.0ha as of right.
- [35] In this case, the subject site has an existing dwelling on a site of 9.5ha. The site was created in 2003 when the underlying parcel of 19.5792ha was subdivided into two lots under subdivision consent RMA 2000-0493 (now renumbered RMA-2000-364166). As the proposal created two sites smaller than 15.0ha, the consent was processed on a notified basis, and granted on 26 October 2000. At that same time, land use consent was granted for a residential dwelling on 'Lot 2' (27 Ings Street) as the new lot was smaller than 15.0ha and residential activity was not permitted. No house was built on Lot 2, and the land use consent has now lapsed.
- [36] Interestingly, although Lot 1 was also considered to be undersized, the existing residential dwelling of this site, 25 Ashton Street, was not consented at the same

time. Presumably the planner at the time considered that consent was not required because the building was an existing structure. I disagree with this approach, and it does lead to the question as to whether or not the existing house is lawfully established on this site. I will note, however, that there was a two-year period in the early 2000s when minimum site size for the Rural-zone was set a 6.0ha (Variation 9A of the Dunedin City District Plan). As the subdivision was completed in 2003, the 6.0ha rule would have meant that the existing dwelling on a site of 9.5ha was a permitted structure. Therefore, while I consider that consent for the house should have been obtained in 2000, it was not actually required in 2003, and as such, the house was established as a permitted activity at the time of subdivision.

- [37] The existing house is now a non-complying activity due to changes to the planning rules when the minimum site size requirement reverted to 15.0ha in 2004 (as part of the outcome of Environment Court decisions), but it is considered to be lawfully established and enjoys existing use rights. These existing use rights will be lost whenever there is any increase in scale or intensity of the residential activity (i.e. a bigger house or additional housing), or any reduction in site area (leading to an increase in scale and intensity of the existing residential activity because of the smaller site). Therefore, establishing the existing residential activity on the new undersized Lot 2 is not considered to be permitted. Likewise, a new dwelling on proposed Lot 1 is not a permitted activity.
- [38] The District Plan requires residential activity to maintain a 20.0m front yard and 40.0m side and rear yards within the Rural zone. The existing house is on an undersized site and relies on existing use rights. If the existing dwelling on-site were to be removed for whatever reason, it is my view that the existing use rights applying to this house would allow a single residential unit to be established within the subject site at a scale and intensity the same or similar to the existing dwelling. There is an argument that it could be placed in a location elsewhere on-site provided the yard spaces are respected.
- [39] In summary, there is no permitted baseline to apply for subdivision, although it is likely a restricted discretionary subdivision proposal would be granted consent on a non-notified basis. While the existing dwelling is lawfully established on the subject site under existing use rights, these will be lost with subdivision. No residential activity for the proposed lots is permitted.
- [40] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 6.7, 17.8, 18.6.1, and 20.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan:
- Lot Size and Dimensions
 - Easements & Encumbrances
 - Infrastructure
 - Hazards
 - Building Platforms, Bulk and Location, Residential Units & High Class Soils
 - Landscape
 - Trees
 - Transportation
 - Archaeological Sites
 - Earthworks
 - Physical Limitations
 - Amenity Values
 - Conflict and Reverse Sensitivity
 - Cumulative Effects
 - Sustainability
- [41] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site.

Lot Size and Dimensions (Assessment Matter 18.6.1(q) [District Plan] and Rule 16.9.5.5 [Proposed Plan])

- [42] The proposed subdivision will create two lots of 6.03ha and 3.55ha. The rationale for the subdivision as promoted by the applicant is to separate the historic house from the bulk of the land, thereby allowing the owner to concentrate on the protection of the house while freeing up the land for agriculture purposes. Both the new lots will be undersized in respect of both the District Plan and Proposed Plan rules.
- [43] Proposed Lot 1 will be an 'L' shape, with the end of Ashton Street connecting near the outer corner. It will have an area of approximately 6.03ha. All the residential neighbours of Ashton Street and Shaw Street, and the rail corridor, will abut proposed Lot 1.
- [44] Lot 2 will have an area of 3.55ha, and will provide the existing house and associated buildings with generous curtilage. The northwest, southwest and southeast boundaries have been selected to align with existing hedges and fences. The northeast boundary will be positioned within the paddock approximately 20m to the northeast of the driveway. I note that there appears to be an error with the plan which shows the width of Lot 2 to be approximately 175m wide. This cannot be the case if Lot 1 beside it is to be 155m wide, as the property has a total width of only 300m or so. One of the measurements of '175m' or '155m' is incorrect which, based on the way the plan is drawn, I believe is the '175m'. This should be closer to 150m.
- [45] Under the District Plan, the minimum lot size is 15.0ha. The existing parent title is 63% of this minimum site size. Proposed Lot 1 will be 40% of minimum site size, and Lot 2, 23%. The Proposed Plan has nominated a minimum site size of 40.0ha for the Rural – Taieri Plains zone although it should be noted that the relevant rule is subject to submissions and minimum site size could change before the Proposed Plan is made operative. In terms of this Plan as notified, the existing site is 23% of minimum site size. The subdivision will have proposed Lot 1 at 15% of minimum site size, and Lot 2, 8%. Clearly, the proposed subdivision is not anticipated under the rules of either Plan, and will result in significantly undersized Rural-zoned lots.
- [46] Looking at the surrounding area, the subject site is situated immediately adjacent to the township of Mosgiel. The southwest boundary of urban Mosgiel is cleanly defined by the Shaw Street housing in this location and by the rear boundaries of other residential properties further northwest. The subject site is part of a distinct block of rural land bounded by the residential boundary of Mosgiel, Bush Road, Riccarton Road West, and the railway/Gladstone Road South. There is approximately 160ha of rural land within this block, with the relevant eight sections of SO 63 (the original subdivision plan of the Taieri Plains) still discernible. SO 63 subdivide the Taieri Plains into 21ha sections. The subject site is the result of one of these sections, Section 3, being subdivided into two in 2003.
- [47] Despite its proximity to Mosgiel, there is very limited residential use of the land within this rural block as shown by Figure 1 of Appendix E attached to this report. Excepting the house on the subject site and a line of clearly residential properties along the Bush Road edge, there are only two existing residential dwellings and two others consented for 10 Riccarton Road within this rural block. The major occupier of this block is Wal's Plant World, accessed off Bush Road, which not only has a very busy retail component associated with its garden centre, café, fruit and vegetable shop, recreational activities, and golf driving range but also the nursery itself. It is noticeable, however, that despite the block's proximity to Mosgiel itself, there is very little blending between the zones; the town boundary is sharply defined, the residential land is clearly residential, and the rural land is open space with very little built development.

- [48] There are perhaps two ways of viewing the subdivision. The subject site is already undersized, and if the intention is to reduce the amount of land associated with the existing historic home, then a new undersized site containing the existing house is not really an issue provided the balance land remains undeveloped and/or is amalgamated with an adjoining rural property. This scenario would achieve the purpose of the subdivision without creating any new residential activity. While it would fragment the rural land resource, the land would still be available for productive use even if not an economically viable property. Unless the land was amalgamated with an adjoining property, however, this scenario would run the risk of creating a site with limited use because of economic reasons.
- [49] The second way of viewing the subdivision is to focus on the new site. The subdivision will create what will be, in effect, a lifestyle block. It will introduce residential activity into the Rural zone at a density not anticipated by the District Plan and runs the risk of blending the zones in this location. It will not only produce an additional undersized lot under both the current and proposed District Plans but it will fragment the rural land resource. The residential activity will become the primary focus of the property which will have limited economic worth as a productive farm block. And yet, without the residential dwelling on-site, the land will have limited value for a purchaser. I therefore understand exactly why the proposal includes residential activity for proposed Lot 1. In fact, if Council were to receive this application with no residential activity promoted for Lot 1, it is likely that Council require the applicant to confirm a viable use for the land as part of the consenting process. This would usually be residential development.
- [50] The position of the existing driveway does not lend itself to a nice tidy subdivision layout for two new sites. The driveway provides formed access to the historic house and sheds from the site's only section of legal frontage. It is also tree-lined and gives the entranceway to the house character and amenity. It is therefore desirable for this driveway to be retained for use by the house. However, the retention of the driveway for use by the house of Lot 2 means that Lot 1 will be effectively split into two distinct sections to either side of the drive. To avoid this, a new, much longer driveway to the house would need to be formed around the exterior boundaries of the subject site, either along the railway boundary or the back boundary of the Shaw Street housing.
- [51] The original application plan showed the driveway to be part of the historic house lot by creating a parcel with a leg-in. The leg-in resulted in the land on either side being separate parcels where were to be held together as one site through an amalgamation condition. I considered that there was an increased risk of the two parcels being separated onto two new titles in the future (thereby creating three properties in total) on the basis that there was limited connectivity between the two parcels. As such, the proposed subdivision was revised to create one large Lot 1 that included the driveway. The existing house retains use of the driveway via a right of way easement. The outcome in terms of practicalities is more or less the same, but there will not be distinct cadastral parcels on either side of the driveway which would lend themselves easily to further separation. The main difference is that Lot 1 will own the driveway, giving this property owner rights to cross the driveway in any location, remove any fencing or trees, or to use the driveway for access to the new house. This could cause conflict between the two property owners, particularly if the owner of Lot 2 feels the driveway should be for the exclusive use of the existing household. However, as the right of way will be a private easement, any disagreements that might arise will be for the two parties to resolve, and will not involve Council.
- [52] This subdivision proposal seeks to create an additional house site on an undersized Rural-zoned lot at the very edge of Mosgiel. Access will be via a suburban neighbourhood street. Despite the property's proximity to Mosgiel, the undersized lots will not be easily seen from public viewpoints and, if not for the new house on Lot 1, the general public will not realise that a subdivision had occurred, let alone be aware that the new lots were undersized. In this respect, the proposed subdivision will have

minor effects. However, it will create two new sites considerably smaller than minimum site size as set by the District Plan, and will fragment the Rural zone, reducing the economic and productive worth of the land.

- [53] The applicant has offered a no-further subdivision or development covenant for the new lots. If the consent is to be granted, it is my opinion that such a condition should be imposed on the title either by covenant or consent notice. While the proposed lots are too small to be further subdivided or developed as permitted or restricted discretionary activities, it is always possible that a resource consent application similar to this one will be put before Council. A clear indication from the Council that such an application will not be treated lightly, and is likely to be unsuccessful, is not an inappropriate action.
- [54] I note that proposed Lot 1 is situated immediately next to urban Mosgiel. If the town is to expand, it will likely be along its urban fringe. Proposed Lot 1 will therefore have qualities making it attractive to a large scale developer although neither the present or proposed zoning would facilitate residential subdivision. However, consent notices can be varied or removed, and anyone can apply to Council for a zone change or resource consent for residential subdivision; whether such applications would be successful or not is likely to depend on the Hearings Committee and possibly the Court, but a specific restriction on further subdivision or development registered on the title will at least indicate that the Council is not necessarily receptive to such an application.
- [55] The Proposed Plan is even more stringent than the District Plan, setting a minimum site size of 40.0ha for subdivision, and 25.0ha to establish the first residential dwelling on a rural site. These rules are subject to submissions and are therefore not finalised, but it should be noted that there are a number of supporting submissions in favour of these lot sizes, predominantly from parties who have an interest in maintaining rural land for productive purposes. There were also submissions from those who sought to have the 15.0ha minimum site size re-imposed over the Rural zones, and others who thought the proposed site sizes were too large.
- [56] I consider that the proposed undersized lots are not what the District Plan or the Proposed Plan seek for the Rural zones. The minimum lot size for the District Plan was set at 15.0ha by an Environment Court decision in November 2004, and the establishment of houses on undersized sites was also subsequently made a non-complying activity by the Court. Smaller sites and a denser degree of residential development are not anticipated by the District Plan. The proposed subdivision will therefore have effects on the Rural-zone character which are more than minor as it effectively creates two lifestyle blocks inconsistent with the expectations of the Rural zoning.

Easements (18.6.1(i)) and Encumbrances

- [57] There is only one easement registered on the title of the subject site, a right to drain water in gross which serves a Council-owned stormwater pipe crossing the southeast corner of the property from the end of Ashton Street to the open watercourse running along the railway boundary. This easement will pass down automatically onto the new site of proposed Lot 1. It will not create any issues for the development of Lot 1 except possibly the formation of a new driveway depending on the depth of earthworks.
- [58] In terms of new easements, the applicant proposes creating a right of way over Lot 1 in favour of Lot 2. This right of way is shown on the survey plan as being 20.0m wide, and it will contain the existing driveway to the historic home on the subject site. While Lot 1 will own the right of way and therefore will have to the right to use it, the application plan shows the proposed building platform on Lot 1 utilising a separate accessway.

- [59] The District Plan requires a right of way within a rural area to have a minimum legal width of 6.0m, so the proposed 20.0m is more than generous and is not a Council requirement. Furthermore, the existing fencing is approximately 12.0m apart. The application plan shows this existing fencing to be moved so that it will be 20.0m apart to, presumably, define the extent of the proposed right of way. While the application gives us no real reason for this wide right of way, I note that legal road reserve is typically 20.12m wide (Ashton Street itself is only 15.0m). I suspect that the easement width is designed to preserve future development options by retaining the ability to build a road. This is not a bad objective. While the current and proposed zoning of the land, and the proposed 'no subdivision or development' restriction, means that future development is not anticipated, this could change in the future and many a development today would have benefitted by some earlier forward thinking. However, I do not believe that Council can require an easement which is 20.0m wide.

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

- [60] The existing dwelling of proposed Lot 2 is already fully self-serviced. The future dwelling of proposed Lot 1 will obtain electricity and telecommunications from Ashton Street, but will be fully self-serviced for water supply, wastewater disposal and stormwater disposal. Rainwater storage tanks are to be used for domestic and fire-fighting supply, although the application notes that the proposed building platform will be within 135m of a fire hydrant in Ashton Street. Wastewater is to go to a septic tank, and stormwater will be piped to the Owhiro Stream within the site.
- [61] The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She advises that a review of the Council's GIS records show that the proposed subdivision is located within the Rural zone and outside of the Rural Water Supply Areas as shown in Appendix B of the Dunedin City Council Water Bylaw 2011.
- [62] The property is serviced with an 'out of zone' water supply which is metered by water meter #05M105446. This can be retained for use by the existing house of Lot 2 but must not be used for Lot 1. The house of Lot 1 can collect stormwater from roof surfaces for domestic water supply which should be stored in suitably sized tank/s with a minimum of 25,000L storage per lot. The Water and Waste Services Business Unit advises that 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. Although outside of Council's water supply area, the future dwelling of Lot 1 is expected to be within 135m of the hydrant in Ashton Street, and the Fire Service may not require specific water storage on the new lot. This will need to be confirmed by the Fire Service.
- [63] As the proposed subdivision is located within the Rural zone, there are no reticulated wastewater services available for connection. Any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.
- [64] Likewise, the proposed subdivision is outside of the reticulated stormwater services. Stormwater from rights of way, drain coils and water tank overflows are not to create a nuisance on any adjoining properties. There is a 450mm Council-owned stormwater pipe and outfall to Owhiro Stream located in the south-eastern corner of the site, and an easement in gross will be required for this existing pipe (in fact, one already exists). It should also be noted that Section 5.5 of the Dunedin Code of Subdivision and Development prohibits any building within 1.5m of a stormwater pipe. It is recommended that if any building or construction is to take place within 2.5m of a pipeline or manhole, plans should be discussed with the Asset Planning Engineer, Water and Waste Services Business Unit, well before commencement of the project. This includes the forming of the accessway to the building platform on Lot 1.

- [65] There is an open watercourse, the Owhiro Stream, located within proposed Lot 1. The property owner is responsible for a watercourse from where it enters their property to where it exits. This includes keeping it and any associated grates clear so the water can flow unimpeded. Any discharge of stormwater to the watercourse must comply with the requirements of the Regional Plan: Water, and with any building consent requirements for related structures. It is recommended that the applicant contacts the Otago Regional Council to discuss permitted rules to discharge stormwater to a watercourse, and whether or not consent is required.
- [66] The Water and Waste Services Business Unit did not identify any concerns with the proposed servicing of the new lots. The only conditions recommended by the department are in regard to the creation of easements.
- [67] The Otago Regional Council has also provided comment on the application, attached in Appendix E of this report. It advises the applicant to ensure that the proposal to discharge stormwater to Owhiro Stream does not require approval under the Otago Regional Council's designation along the Owhiro Stream as notified in the Proposed Plan (in relation to the placement of any piping). Reduction in capacity of the Owhiro Stream during flooding events (due to the proposed stormwater discharge) might also be an issue of interest to the Otago Regional Council as the stream is part of the East Taieri Drainage Scheme. The Otago Regional Council's consent team will be able to advise further on these matters, and also on how the discharge of stormwater to water will sit under the regional council's water plan.

Hazards (18.6.1(t))

- [68] The Hazards Register shows the general area, including the subject site, to be subject to land instability and seismic risks. The land stability issue is in regard to the alluvial fans which make up the Taieri Plain. Recognising that the Plain is a floodplain, the subject site is also subject to a flooding risk. However, the applicant advises that while the site has been subjected to surface flooding in the past, the Owhiro Stream has never overflowed its banks within living memory.
- [69] The site itself is almost level, and low lying at less than 20.0m above sea level. The Council's GIS contour map indicates that the ground level varies from 15.0m to 17.5m, so there is only 2.5m variation in ground level across the entire property except in the location of the Owhiro Stream which follows a channel. The highest point on-site appears to be the shed location at 17.5m, with the existing house being not much lower at 16.5m. The proposed building platform is on an area shown slightly elevated about the surrounding land, at a level of 16.0m, although on my site visit I did not notice any higher ground in this location. I note that the land within Lot 1 to the north of the existing driveway is higher again, up to 17.0m or so.
- [70] Council's Consulting Engineer, MWH, has assessed the application in relation to the Hazards Register, street files and available aerial photography. He notes that the site is subject to the following hazards: 10106 – Alluvial Fans-active floodwater; 10111 – Seismic – likely amplification; and 11582 Flood Hazard Area 19 – Classified as 'Hazard 3' in 2GP. The site is recorded on the GNS Assessment of Liquefaction hazards in Dunedin City, dated May 2014, as within Domain B and a small portion of the western boundary (into proposed lot 2) as being within Domain C.
- *Domain B: the ground is predominantly underlain by poorly consolidated river or stream sediments with a shallow groundwater table. There is considered to be a low to moderate likelihood of liquefaction-susceptible materials being present in some parts of the areas classified as Domain B.*
 - *Domain C: the ground is predominantly underlain by poorly consolidated river or stream sediments with a shallow groundwater table, with a moderate to high likelihood of liquefaction-susceptible materials being present.*

- [71] The ORC Lower Taieri Floodplain hazards (September 2006) identifies the property within zone I – where “Existing protection is provided to a 100 year (1% AEP) flood level, and floors are to be set 200mm above flood level.” This 200mm flooding relates to local ponding, and the dwelling should be set 200mm above any known local ponding levels.
- [72] This report was revised and updated by the Otago Regional Council Report on Natural Hazards on the Taieri Plains, Otago, Engineering and Hazards Committee, July 2012. Figure 4.10 of this report places the property within Area 29 – Mosgiel, with the flood hazard characteristics defined for this area as follows:

'This area east of the East Taieri Lower Pond is exposed to flood hazard from the Silver Stream, the Owhiro Stream and the hill catchments to the south and from internal runoff. Because of its elevation it is not affected by the flood hazard of the Taieri River. The area lies within the East Taieri Drainage Scheme which provides land drainage to a rural standard (ORC, 2012c).

'The floodbanks along the southern side of the Silver Stream contain flows of 260m³.s (the assessed peak flow of the April 2006 event) or more. There are no floodbanks next to this part of the Owhiro Stream but the stream channel has been modified in the past so as to increase its capacity. Despite that, extensive flooding of Gladstone Road South occurred in the April 2006 flood making the road impassable to vehicles and pedestrians.'

- [73] This report was further updated by ORC report: Flood hazard on the Taieri Plain, Review of Dunedin City District Plan: Natural hazards First revision: August 2015; with the following description:

'Internal runoff is the predominant source of flooding in this area, although it is also exposed to flooding from Silver Stream and Owhiro Stream (ORC, 2013) (Figure 49). The southern part of this area was affected by flood flows in the Owhiro Stream in April 2006, making Gladstone Road South impassable to vehicles and pedestrians. Scheduled drains and other overland flow paths provide an important function by conveying floodwater downslope to Area 17 (Figure 49). Structures and earthworks can impede or redirect this flow of water. It is noted that drains that form part of the East Taieri Drainage Scheme provide land drainage to a rural standard.

'The depth of water can range from 0.25m in smaller and wider overland flow paths, through to 2m in some drains. Velocity of runoff tends to be relatively slow, although higher speeds can occur due to water overtopping adjacent flood banks and in the larger drains.'

- [74] The Consulting Engineer advises that this site is on the flat alluvial plains of Mosgiel. Underlying soils are alluvial deposits. He does not expect significant earthworks to be undertaken on the property as part of the development. There are no general potential instabilities of concern affecting this land, and the proposed subdivision is not expected to create or exacerbate instabilities on this or adjacent properties.
- [75] The Consulting Engineer has reviewed his previous comments as part of this consent, and comments that MWH's recommended advice stays the same:

Underlying soils have a potential for amplified movement and liquefaction during a significant seismic event. The cases for seismic loading are normally addressed at building control stage. The following may be required:

- *The Dunedin City Council Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1. This verification may require site investigation in accordance with the standard, potentially including dynamic cone testing to 10m depth to quantify the potential for liquefaction for each dwelling.*
- *Specific foundation design may subsequently be required, or if the assessed potential movement is significant; specifically designed ground improvement works may be more cost effective.*
- *Prior to undertaking sale of any property, the applicant must confirm the requirement for this assessment with Building Control. If Building Control confirms this is a requirement, then the liquefaction assessment must be undertaken. This information must then be provided to new property owners at time of sale, for future use in Building Consent.*

[76] The Consulting Engineer recommends that the applicant confirm a suitable minimum floor level for the lots. A floor level will need to be confirmed with Building Control prior to the development of Lot 1. I note that it is difficult to determine such floor levels with confidence, and believe that appropriate levels should be set at the time of building consent application for the new dwellings on this land. I also note that the Proposed Plan has nominated a minimum floor level of between 0.1m and 0.9m for Lot 1, or more specifically, approximately 0.5m in the location of the proposed building platform. This is not a District Plan requirement at this stage although it may become so as the Proposed Plan becomes operative. The above recommendations are therefore typically addressed in subdivision consent decisions as advice notices. The floor level will be set by Building Control at the time of building consent. The applicant has promoted a minimum floor level for Lot 1 at or higher than the floor level of the existing house. Until this level is known, I cannot say whether it is adequate or not, or how it relates to the floor level likely to be set by Building Control.

[77] It is my view that, if the Committee is of a mind to grant consent, the proposed subdivision is unlikely to be compromised by the natural hazards affecting this land. The applicant may be able to provide the Committee with information as to how the recent flooding of the Taieri impacted on the proposed building site, if at all. Given the low-lying nature and the presence of the Owhiro Stream, the floor level of the future house for Lot 1 will need at a reasonable height above existing ground level. As noted above, the ground at the existing house is approximately 0.5m higher than the ground level at the proposed house site, meaning that any dwelling built on the building platform with a floor level comparable to the existing house will be at least 0.5m above existing ground level.

Building Platforms (18.6.1(h)); Bulk and Location (6.7.9); Residential Units (6.7.15); High Class Soils (6.7.11)

[78] Proposed Lot 2 is already developed, and no further development of this land is anticipated.

[79] The applicant has nominated a building platform for Lot 1. This is shown as a rectangle measuring 40.0m by 20.0m. It will be situated 50.0m from the end of Ashton Street, and 40.0m from the nearest side boundary, being that shared with the railway. The application states that the external appearance and colours of the dwelling on this platform will be subject to Council's approval at the time of building consent application, and that a vegetation planting or management plan will need to be lodged for approval at the same time as the building consent application for the future house. The reason given for choosing this particular location is that it is outside of any yard spaces, and it will not compromise the existing rural amenity as perceived by the adjoining residential neighbours.

- [80] The Rural zone rules of both the District Plan and Proposed Plan specify 40.0m yards (or setback distances) for residential buildings. The proposed building platform will meet this requirement from all boundaries, and there are no bulk and location breaches proposed. In this respect, the position of the proposed building platform is acceptable.
- [81] The site of the building platform has been selected in part to minimise impact on residential neighbours. This it will largely achieve, except possibly in regards to the residential properties of 23 Ashton Street and 76 Shaw Street which will be the two properties with the clearest views of the future house. Neither property owner has submitted on the application and, accordingly, it is accepted that the property owners have no issues with the proposed house position.
- [82] The neighbour to the southeast is the railway, and although the proposed building platform will maintain the southeast side yard, the position of the future dwelling will be relatively close to the railway boundary. This has the potential for reverse sensitivity issues to arise, as noted in KiwiRail's submission. I note that while there is industrial activity situated within the rail corridor close to the boundary (the building platform will be opposite an industrial and office building), the Main South Railway line itself is approximately 45.0m from the boundary, making a distance of at least 85.0m between the house and train movements. Even so, KiwiRail has submitted in opposition, noting the potential for reverse sensitivity issues and the absence of a signed covenant between the applicant and KiwiRail regarding building design and the making of complaints. The rail corridor is subject to a designation for railway purposes, and it is possible that future development of the rail corridor could include new sidings and other activities associated with rail operations which could result in the source of noise being brought closer to the boundary.
- [83] The building platform is in line with Ashton Street itself. Anyone approaching the subject site along Ashton Street will look straight at the future house, albeit through the existing driveway trees. The applicant proposes planting vegetation at the northeast end of the proposed building platform for the purposes of screening. This could be very effective over time, but until the young plants mature, the future house will not only be visible to the road but will be subjected to headlight glare at night.
- [84] While the Council has the authority to impose conditions, such as the imposition of a building platform, under sections 108 and 220 of the Act, the conditions imposed by Council are required to meet the Newbury Principles. These require a consent condition to be:
1. imposed for a planning purpose.
 2. fairly and reasonably relate to the development for which permission is being given.
 3. reasonable.
- [85] In this case, the building platform has been promoted by the applicant and is not a Council requirement. While it relates to the establishment of a dwelling on an undersized Rural-zoned lot, it is not clear in terms of the District Plan why this dwelling needs to be confined to a particular location. The rule being breached is concerned with density and not bulk and location. The proposed building platform does not address any geotechnical, hazard, or landscape issues. It is outside all yard spaces and is not imposed to authorise a yard encroachment in a specific location. It does not seek to minimise reverse sensitivity issues. The question has to be asked whether or not the house position is a critical factor in Council deciding to grant consent, should that occur. And if a new owner sought to shift the house location, would Council be reasonable in preventing that outcome if there were no yard breaches arising and no difference in overall development density?

- [86] The proposed location of the platform is designed to mitigate effects on residential neighbours, giving some certainty that the new dwelling will not disturb their outlook. In this respect, the building platform is a useful tool allowing the Council to assess rural amenity impacts, and should a future house be confined to the proposed building platform, it will provide certainty for neighbours. However, from the perspective of a future purchaser, I suspect that the proposed building platform will not provide the most desirable house site. It is closer to the railway than it needs to be, on the lower end of the site not far from the Owhiro Stream, and will be subjected to general view and headlight glare (for a period at least) from Ashton Street. Experience has taught me that new owners often wish to shift defined building platforms and, even if the building platform is registered on the title by a consent notice, the new owners can apply to Council to vary the location (or even remove so there is no permanent restriction in house position) of the building platform.
- [87] From Council's perspective, if consent were to be granted for a residential dwelling on an undersized Rural-zoned lot, there is little difference in planning terms should the house be built on the northern or southern side of the existing driveway. A location in the north portion of Lot 1 would certainly diminish the risk of reverse sensitivity issues arising from the proximity of the railway. Therefore, if Council were to receive an application to vary the building platform position, it would, in my opinion, be difficult for Council to decline such an application (provided the new position maintained all the yard spacing) if there is not a very clear reason for the imposition of the original building position. Any condition which does not meet the Newbury Principles is open to challenge.
- [88] It is therefore possible that a future dwelling on proposed Lot 1 could be positioned to the rear of the Shaw Street housing. It is unlikely that these residents are aware of this possibility, given that the application promotes a building platform elsewhere. Should there be an application to shift the building platform to this area, it is possible that these neighbours would not be considered as 'affected parties' if the house is 40.0m or more from their boundary, although they may consider themselves to be significantly affected.
- [89] Perhaps the answer is to restrict the house to the south-side of the driveway, but not confine it to a tight building platform, thereby giving a new owner enough flexibility to select a building site they like. In terms of minimising effects on residential neighbours, there is no difference between a house on the proposed building platform and one situated, say, 100m further west. Any position on the south side of the driveway will achieve the goal of minimising effects on the residential neighbours. It is recommended that 40.0m yard spaces be maintained in respect of the external boundaries of the subdivision as this is a District Plan expectation, but the yards for boundaries shared with proposed Lot 2 need not be 40.0m if a reduced yard provides a better outcome for siting a new house.
- [90] Possibly the most effective way of ensuring that the proposed building platform is respected in the future is to have it registered on the title of Lot 1 with a private covenant imposed by the subdivider. Such a covenant does not have to meet the Newbury Principles. This then provides the subdivider (or owner of proposed Lot 2 if the property has sold) with the means to legally ensure the future house position as defined at the time of subdivision is retained. Of course, this requires the owner of Lot 2 to actively enforce the private covenant, and they might not be inclined to do so. Therefore, this method of registration on the title may not make any difference anyway.
- [91] As building platforms imposed by subdividers have caused issues for Council in the past when new owners seek to change them, my personal preference is not to impose any building platform unless it is for a specific and environmentally sound resource management reason. In this case, while there might be reasons to place the building platform in the position identified, I do not believe that there are sufficient resource

management reasons for Council to insist that it be respected. However, a more generous building platform covering most of the land on the southern side of the driveway would be a compromise that provides a new owner with options for a building site while ensuring that no additional and unexpected effects will be imposed on the residential neighbours. This would be a more reasonable restriction for Council to place on the new title of Lot 1.

- [92] Assessment Matter 6.7.15 of the District Plan directs Council to consider the effects of residential units in the Rural zone in terms of cumulative effects, potential conflict, the covering of soils by hard surfaces, the effects on neighbours' amenity and economic well-being, the effects on the open nature of the environment, and the degree to which the productive potential of the site and future sustainable use is compromised. These subjects are discussed in greater detail elsewhere in this report. In summary, I do not consider that one additional dwelling will have a significant presence in this location, and the effects will be less than minor accordingly. However, proposed Lot 1 will be considerably undersized, and the residential activity will impact on the productive worth of the land if for no other reason that the new dwelling will be placed mid-paddock and will compromise the ability to manage the land. It will also fragment the rural land resource.
- [93] The subject site is also comprised of high class soils. While the development proposal does not remove high class soils from the site, the new house will cover a portion of the soils and remove them from production. If the position of the house breaks up what is currently a large paddock, then the house will impact on the ability to cultivate the high class soils with heavy machinery.

Landscape (6.7.25)

- [94] The subject site is not in a recognised landscape, and therefore the Landscape Section of the District Plan is not relevant to this subdivision proposal. The Council does not control the position of buildings outside of landscape areas, nor the appearance or colour of the buildings. The general provisions of the Rural zone in respect of rural character and visual impact do apply, however, and need to be considered.
- [95] The application notes that the present house on-site is well screened by large trees and is not visible from any public viewpoint. It is also well back from any roads. The site itself is difficult to see as its only road frontage is the end of Ashton Street. It is screened from Shaw Street by the row of housing on its boundary, from Gladstone Road by the railway and industrial buildings, and from the northwest and southwest by a large rural property with hedging. The existing house is 280m as the crow flies from the end of Ashton Street. The Shaw Street neighbours enjoy an open rural vista to their rear over the site, but otherwise, there is limited relationship between the site and the public in general.
- [96] The only effects on rural landscape will be due to the proposed house as this is the only physical change to the land anticipated. The applicant proposes placing the house of Lot 1 to the south of the existing driveway, in a position not far from the railway corridor and in line with Ashton Street. In terms of minimising visual effects on residential neighbours and the existing farmhouse on-site, the proposed house position is certainly successful. The relationship with Ashton Street is less discrete, but possibly on limited concern given the mature trees at the property entrance, the proposed screen planting, and the distance from the end of the road.
- [97] Council's Landscape Architect has considered the proposal. He advises that the visual effects of a dwelling on proposed Lot 1 will depend to an extent on its location, bulk, and design. He concludes that, from a perspective of landscape effects (rural and amenity values), a modestly designed additional dwelling on Lot 1 closer to the Mosgiel urban area will have no more than minor adverse effect. As such, it is my opinion that the subdivision and future dwelling of Lot 1 will have adverse effects on

the rural landscape which is minor to less than minor provided it is sited clear of the residential neighbours and its bulk and location is consistent with the District Plan rules.

Trees (15.6)

- [98] There are five listed trees, T095, T096, T097, T098 and T099, on the subject site which are to be carried over for protection under the Proposed Plan. These trees have been incorrectly located on the current District Plan maps, and are situated near the existing dwelling. As such, the listed trees will all be contained within proposed Lot 2. There is no intention to remove these trees as part of the subdivision or development proposal, and the proposal is not expected to have any implications for these trees.

Transportation (6.7.24, 18.6.1(c), & 20.6)

- [99] The proposed subdivision will result in one additional residential activity using the existing entranceway to the subject site. There will be no change to the formation of Ashton Street or the present entranceway, and very limited change to the use of Ashton Street. A new driveway is to be constructed within the site.
- [100] Council's Planner/Engineer Transport, Transport, has considered the application. He notes that legal and physical access to both lots will be via the existing road frontage to the end of Ashton Street. The existing driveway will have a right of way created over it through Lot 1 in favour of Lot 2. The existing vehicle access formation within the site is metalled, and the applicant does not intend to hard surface it. They state that it is in good condition, appropriate for the intended residential use, and the cattle stop prevents loose material migrating from the site onto the adjacent road carriageway. In this instance, Transport considers it acceptable for the proposed right of way to remain as a metalled surface given the above considerations.
- [101] The Planner/Engineer Transport notes that there is more than adequate on-site parking and manoeuvring provision within Lot 2 to cater for the needs of the existing residential activity. Transport will assess the provisions for parking and manoeuvring at the time of resource consent or building consent application for development on Lot 1. Overall, Transport considers that the traffic generated by the proposed subdivision and additional residential unit will have no more than minor adverse effect on the safety or functionality of the transport network, and the proposal is acceptable. No conditions of consent are recommended.
- [102] From the plan submitted with the application, it appears that the applicant intends the existing driveway to remain predominantly for the use of the existing residential activity on Lot 2 despite the fact that it is contained within Lot 1. A new driveway to the proposed building platform on Lot 1 is shown deviating from the existing access immediately inside the roadside gate. However, as Lot 1 owns the driveway for the first 170m or so, the property owner will have full rights to use this driveway and to make changes to its formation, fencing and plantings. If the present property owner does not intend this to happen, then a private covenant or agreement will need to be entered into between the two parties clarifying what the owner of Lot 1 can and cannot do in respect of the existing driveway and new right of way. The implementation of a formal agreement to determine maintenance responsibilities of a right of way is a standard approach, but in this case, the documentation might need to be more detailed than is typical.
- [103] It is my view that the proposed subdivision and residential development of Lot 1 is not expected to have any adverse effects on the transportation network, and the only conditions of consent which will need to be imposed should consent be granted are those regarding the creation of the right of way easement over Lot 1 in favour of Lot 2.

Archaeological Sites (8.13.16)

- [104] The house on the subject site is listed in the District Plan's Schedule 25.1 as B633 – Johnstone Farmhouse, with the entire external building envelope being protected. I note that Council's mapping of the site appears to have identified the wrong structure on-site as B633. This listed structure should be the house in amongst the mature trees; not the sheds at the northern end of the property.
- [105] The rationale given for the proposed subdivision is, '*... to facilitate the protection of a unique heritage building ...*'. The application notes that 3.55ha is well below minimum lot size for the Rural zone, but this area includes the land associated with the historic dwelling which is described as being '*... complimentary to the practical management of that existing residential activity.*' The proposal is described as recognising and protecting a building that has been identified as being important to the City. It is also said to free up the agricultural land. The application states:
- 'This proposal is primarily to facilitate a significant improvement in the property management for an existing heritage building. Isolating the designated building and trees within a specific 'managed' site is positive in terms of effects, and positive in terms of preserving the City's heritage.'*
- [106] The applicant also draws comparisons with another subdivision proposal previously consented by Council for 949 Highcliff Road. That consent, SUB-2007-2, created an undersized Rural-zoned lot of 0.7175ha containing a historic homestead and outbuildings, and a balance lot of 15.0ha with a landscape building platform for a new residential unit. The consent was granted by the Council, but went to the Environment Court on appeal. The Environment Court confirmed the Council's decision, and the property has now been subdivided.
- [107] In my opinion, there are two notable differences between the proposed subdivision and that of SUB-2007-2. The first is that the historic buildings of 949 Highcliff Road are far more tightly contained within their new lot. Lot 2 DP 424594 has an area of 0.7176ha including the long leg-in driveway. Its boundaries are defined by the edges of the driveway, the back wall of the accessory buildings, and an area of lawn in front of the house. It does not include any farmland. The second difference is the balance land. Lot 1 was promoted at the time of the application as being a complying 15.0ha lot. In fact, on survey, it is slightly undersized at 14.9307ha but close enough to minimum site size for the Environment Court to grant consent and a variation to the land use consent, LUC-2007-12/A, to be issued to authorise the residential activity.
- [108] In this case, the proposed house site will have an area of 3.55ha. While the buildings on-site are more widely distributed (there is 60m between the house and shed) and a larger site could be expected, the proposed Lot 2 includes a paddock to the rear of the house, part of the paddock on the northeast side of the driveway, and grazing land between the buildings and to the north of the sheds. If the purpose of the subdivision is to separate the house from the farming operation, then there is still considerable farming land being retained within the house block.
- [109] In terms of managing Lot 2, the owner will still have to undertake maintenance, grazing and/or harvesting activities and there is no obvious reduction in farm work resulting. If anything, 3ha of pasture might be more time-consuming to manage than 9ha. It appears from Council's aerial photography that wrapped silage or hay has been taken from the two paddocks on either side of the driveway at least once, so the land is definitely suitable for mowing. A contractor will be prepared to purchase standing silage or hay on a property of 9ha, but may be less willing to do so on a much smaller area. It then falls fully to the landowner to maintain the land. I therefore suspect that the management of the 3.0ha site will not allow the property owner to give much more attention time-wise to the historic homestead than would a 9.0ha site. The sale

of 6.0ha will provide a cash injection into the equation which can be spent on maintenance of buildings, but this is not the reason given for seeking to dispose of 6.0ha. To be truly comparable to the subdivision of 949 Highcliff Road, the applicant would need to consider a layout that is tightly confined to the house and its domestic curtilage, and the driveway in. I calculate this as being approximately 0.6500ha. The farm sheds would be retained with the farm land.

[110] The second difference is the balance land. This proposal will create another undersized site of just over 6.0ha whereas SUB-2007-2 created a balance lot close to minimum site size. The new house on the vacant site therefore did not breach the density provisions to any degree. While a new undersized balance lot could be acceptable for this subdivision of 25 Ashton Street, it is desirable to have as much farmland as possible in the lot (as it is being promoted as a farm block), which brings us back to the above point about the amount curtilage around the house; one lot size cannot be maximised unless the other is minimised. I have no particular view on whether the house site should be small or large, but I note that there is some tension in the argument the subdivision will allow the house owner to concentrate on the maintenance of the house when it is contained within a 3.55ha lot.

[111] One of the opposing submitters has also noted this inconsistency between protecting the heritage building and the freeing up of agricultural land for farming activity. She notes:

'The existing home is already well protected under its existing use rights and there is no need to subdivide to facilitate protection. In fact, I believe subdivision will make the exiting heritage building more vulnerable to development around it ... Protection of the heritage home should not take priority over the protection of the rural zoned from fragmentation for future generations.'

[112] Council's Policy Planner – Heritage has considered the application. He notes that the former Johnstone Farmhouse is a Category 2 building on the Heritage New Zealand register and is a scheduled historic building in the District Plan. The proposed subdivision and associated development will not alter the house, but will impact on its setting. Section 9 of the ICOMOS NZ charter states that "*Where the setting of a place is integral to its cultural heritage value, that setting should be conserved with the place itself.*" The Policy Planner – Heritage notes that the rural setting of this heritage building contributes to the understanding and appreciation of the property as a farmhouse within an agricultural setting.

[113] Regarding the applicant's claim that, "*...isolating the designated building and trees within a specific managed site is positive in terms of effects and positive in terms of the preserving the City's heritage*", the Policy Planner – Heritage considers that the proposed development will have a harmful impact on the setting of the historic farmhouse. This is primarily due to the proposal blurring the existing clear boundary between the site's rural nature and the neighbouring suburban plots within the historic township layout of Mosgiel. The Policy Planner – Heritage is of the understanding that the driveway is to be widened and the trees will be lost. The fencing is to be relocated outwards, but I am unaware of a proposal to remove the trees. Even so, the proposed subdivision will impact on the driveway layout, and this could have implications for the context of the historic house.

[114] Regarding the rationale of subdividing to improve the maintenance of the heritage building, the application states that the property is in above average condition. The Policy Planner – Heritage comments:

'I am at a loss to understand what significant improvements can be made to its property management, when the current regime is already achieving positive results. I therefore attach little weight to the claim that the

applicant is finding it overly onerous to manage both the historic house and the lifestyle block.'

- [115] Overall, Council's Policy Planner – Heritage considers that the proposal will harm the setting of a historic farmhouse through the loss of its present rural characteristics. He states, '*Contrary to the applicant's assessment, it would not provide any positive effects related to the preservation and protection of the heritage values of the building and the site.*'
- [116] In comparison, Heritage New Zealand has made a neutral submission on the proposal and considers that the proposed subdivision will provide an appropriate setting for the Johnstone Farmhouse. The significant trees and other buildings will be kept within the house site which will retain, '*... the relationship between the buildings on the site and enhances the legibility of the site as an early working farm.*' This view is in respect to a 3.55ha site, and Heritage New Zealand might not be quite so relaxed about a smaller house site. It is also a view in direct conflict with that of Council's Policy Planner – Heritage.
- [117] Heritage New Zealand has questioned the practicalities of the promoted conditions. It supports the maintenance of the homestead, but does not see that a consent notice is the most appropriate means of achieving this. It would, at the very least, require a detailed report on the present standard of the building to establish the baseline for the structure and its future maintenance, both externally and internally.
- [118] I note that a consent notice would become the Council's responsibility to monitor and enforce. While the exterior building envelope of the building is protected by the District Plan, the Council does not currently have any controls over the interior, and it is rare for the Council to take an interest in the interior of any privately-owned building. Furthermore, while the Council does not allow a property owner to modify or demolish a listed structure without resource consent, it is far harder for Council to impose maintenance requirements on a property owner, especially if these involve significant costs. Provided the building is structurally sound and its drainage is acceptable, it is not a Council concern whether or not the roof leaks or the kitchen needs painting. I am of the view that the Council should not take on this role in respect of this property.
- [119] Heritage New Zealand also recognises the issues with a consent notice of this nature, and has recommended a conservation plan for Johnstone Farmhouse instead. Heritage New Zealand is happy to assist the property owner in producing such a plan. The applicant need not wait for a consent condition in order to initiate such a discussion with Heritage New Zealand, but the provision of a conservation plan report can become a consent condition if the Council so determines. The Council would then ensure that such a plan is produced by a certain date, perhaps s224(c) certification, but would leave the monitoring of the plan to Heritage New Zealand.
- [120] It is my opinion that the proposed subdivision will bring about little change to the heritage homestead and its immediate setting except the driveway, mainly because it will be contained on a site of 3.55ha which is still a sizable curtilage for a dwelling. I also fail to see how the 3.55ha lot justifies the argument that the subdivision is necessary to protect the historic building. If the separation of farmland from house curtilage is necessary to protect the building, then I note that the subject building is already on an undersized Rural-zoned property and the management of over 3.0ha of farmland will share many similarities with the management of the present 9.58ha but without the economies of scale.

Earthworks (17.8)

- [121] No consent for earthworks has been made with the subdivision application, and no earthworks are required for the subdivision itself. Possibly earthworks will be required

at the time of forming a building platform for the house site on Lot 1. However, the subject site is more or less level, and any earthworks are unlikely to be significant. Should future earthworks on-site breach the performance standards of Section 17 of the District Plan, or the relevant rules of the Proposed Plan if in effect or operative, 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.

Physical Limitations (18.6.1(k))

- [122] Regarding the question as to whether or not the subdivision will produce lots having physical limitations rendering them unsuitable for future use, I note that the new lots will be 3.55ha and 6.03ha. From a purely practical view point, the proposed lots are each of suitable size and shape for a residential dwelling and generous curtilage, with there being no need to breach yard spaces. Proposed Lot 2 is already developed with the existing buildings. There are no known geotechnical issues affecting Lot 1 which are expected to compromise its development potential. Accordingly, there is no expectation that the proposed subdivision will create any site having physical limitations rendering the site unsuitable for future use.

Amenity Values (8.13.5)

- [123] 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"

- [124] The existing environment and character of an area largely determines the amenity values of any site, but amenity values are also expressed by the District Plan through the zoning provisions. In this case, the proposal is for the subdivision of an existing undersized Rural-zoned site into two smaller lots, and the establishment of a new residential dwelling on the new vacant lot. The physical changes to the subject site will be largely confined to the relocation of driveway fencing, the establishment of an additional house, and probably curtilage and screen plantings. The significance of these changes will be tempered by the visibility of the site.
- [125] The District Plan identifies the amenity values of the Rural zone as being a low density of development and a sense of openness. These characteristics are certainly evident when viewing the existing property from the edge of Mosgiel even though it is an undersized site already. The house is a historic homestead set well back from the site's frontage and the Shaw Street housing. It is set against a background of rural land uses. The railway line and industrial buildings within the railway corridor dominate any view of the property from Gladstone Road South or other locations to the south, to the point where the house and site are often blocked from view completely. There are no public viewpoints of the property from the north and west.
- [126] The main visual change to the property will be the new house on proposed Lot 1. The applicant intends that this house be situated in the southern portion of the site, near the railway boundary. This position will be visible from the end of Ashton Street, but will be viewed through the existing gateway, entrance way trees, driveway trees and any new screen planting. I do not expect that it will be visually prominent when viewed from the end of Ashton Street. Only the residential neighbour at 25 Ashton Street will have a direct view to the building site, and this neighbour has not submitted on the proposal, indicating by omission that they do not have any issues with the proposed house site. In respect to viewpoints from the south, the large existing building (83m long and two-storeyed) within the railway corridor will block the view of the proposed house from Gladstone Road South. A house in this position is unlikely to adversely affect the openness of the rural area, simply because of the limited visibility.

- [127] As discussed above, it is possible that a future owner of Lot 1 will seek to change the position of the building platform away from the railway and the lower land to a different site to the north of the driveway. This position will introduce a residence into the rural outlook of the Shaw Street residential neighbours, at least one of whom has submitted saying that she bought her property in part because of its rural outlook. A new house in this position will have an impact on the amenity values currently experienced by the Shaw Street houses which is more than minor. Although only a few of the Shaw Street neighbours have submitted, it should be noted that none of them would expect a house to be built to their rear as part of this proposed subdivision given the nominated building platform elsewhere.
- [128] The amenity values experienced by the residents of the existing house on-site will be impacted on by the proposed residential activity, but are unlikely to change significantly. There will be approximately 200m between the existing house and the proposed building site. I do not consider that there will be any adverse effects on rural outlook for the residents of Johnstone Farmhouse, even if the proposed dwelling is located elsewhere, and the distance involved, combined with the existing noise environment of the railway, township, industrial area, and motorway, means that any noise from the new dwelling is unlikely to be noticeable.
- [129] The amenity values experienced by the residents of the proposed dwelling will be different. Having stood on-site in the position of the proposed building platform, I note that the position is well-located to minimise inter-visibility with the residential neighbours. The long building on the railway corridor is, however, very present. It is not a residential structure, and I would expect its use and occupation will be mainly confined to typical business hours. While it will produce its own adverse effects, mostly visual, on the amenity values of the new residents, it might mitigate the worst of the railway effects given that the building will screen the proposed house from over 80m of the railway line.
- [130] The subject site is situated at the urban edge of Mosgiel, so the amenity values experienced by the future residents of the proposed dwelling will not be typical of rural areas generally. Anyone desiring to live this close to Mosgiel cannot expect full rural amenity values. The crucial matter for the future residents of Lot 1 is likely to be whether they are prepared to live 40m from the railway corridor with its regular train movements, industrial buildings and all associated activity.
- [131] Should the residents of Lot 1 seek to live on the northern side of the driveway, this will take them away from the railway but will bring them into the sightlines of the Shaw Street residential properties. 17 residential neighbours will share a boundary with the subject site, all of them visible from a house sited within the paddock. This may be unacceptable to the future owners of Lot 1 simply on the basis of a lack of privacy, and they could prefer the nominated building platform as a house site after all. Having noted that, it is quite possible to plant out views and the owners of Lot 2 could easily place screen planting between any house site and the neighbouring properties, provided they are prepared to wait some years for full screening to be achieved.
- [132] Other features of residential development can impact on rural amenity. Noise, traffic and increased in activity are all associated with residential properties, and will have effects primarily on neighbours. In this case, most neighbours have not submitted on the application and are, in any case, residential properties with neighbours a few metres away over the side fence. Any increased noise and traffic effects will be less than minor when compared with the urban development in the area.
- [133] Overall, I consider that the adverse effects on the Rural zone amenity values will be minor in this context. The effects will be in respect of one additional residential dwelling, sited in a position of limited visibility and in an area where there is industrial and urban residential activity already established. The effects will also be minimised

by the limited visibility of a new dwelling on this site, especially in the position of the proposed building platform.

Conflict and Reverse Sensitivity

- [134] The proposed subdivision will result in one additional residential unit on Rural-zoned land, situated at least 40.0m from any boundary. Houses are an expected component of the rural areas, and residential activity and farming often co-exist very well. In this case, the rural land use is pastoral farming, and there is no expectation that the farming activity will impact negatively on the quality of residential living for either the existing house on Lot 2 or the new house on Lot 1. Of course, the new owners of Lot 1 might choose to undertake a more intensive farming operation which will introduce new effects to the area but, provided the farming activity is a fully permitted activity under the District Plan provisions, is acceptable in this location.
- [135] The new house site for proposed Lot 1 is shown as being more than 40.0m from its residential neighbours. The fact that both the new house and the neighbouring properties are residential activities means that any conflict arising will be typical of neighbourly disputes anywhere rather than a direct consequence resulting from the actual nature of the neighbouring activities.
- [136] The southern neighbour to proposed Lot 1 is the Main South Railway Line and this provides the greatest risk for conflict and reverse sensitivity between neighbours to arise. KiwiRail has submitted in opposition to the application primarily for this reason. As the submission states:

'The establishment of a noise sensitive activity (a residential dwelling) 40metres(m) from the MSL rail corridor has the potential to give rise to reverse sensitivity effects, and therefore impact the operation of that line. This is not recognised in the application documentation.

'KiwiRail are not opposed to residential development adjacent to the rail corridor, however seeks that this be designed and constructed to ensure that reverse sensitivity effects are mitigated to the greatest extent practicable.'

- [137] KiwiRail seeks that a covenant be registered on the title of Lot 1 prohibiting the occupants from objecting to any noise or vibration emanating from the operation of the railway. Such a covenant will be a private agreement between the parties, and will not be administered by Council. KiwiRail also seeks a condition of consent requiring a specific standard of construction for the future house to achieve an acceptable level of noise insulation. This includes a method of mechanical ventilation as any open windows will render noise insulation ineffective. This proposed condition could be imposed on the land use consent, but could also be imposed on the title as a consent notice. A condition of land use consent should suffice, but if the condition is to be registered on the title of the new lot as an on-going condition (therefore covering any future extensions, for example), then it will need to be a consent notice.
- [138] As I have discussed above, the proximity of the railway could be a deciding factor in the new owner of Lot 1 seeking to relocate the building platform to a position north of the driveway. Even if the proposed house site is utilised, the new dwelling will be at least 40m from the railway land boundary, but more like 87m from the railway line itself. Plenty of residential dwellings are located in much closer proximity to railway lines than this (the nearby Mosgiel township being a prime example) with no apparent conflict occurring. In fact, residents can become immune to loud noise if it is a common part of the environment. Even so, should consent be granted, I think it appropriate that a condition regarding the standard of building construction is imposed on consent, but the no complaints covenant should be a purely private arrangement between the parties.

Cumulative Effects

- [139] The nature of cumulative effects is defined in *Dye v Auckland Regional Council I* [2002] 1 NZLR 337, as the "... *gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration*".
- [140] The application does not discuss cumulative effects in respect of this subdivision and development proposal. The result of the proposal, should it be granted, will be one additional dwelling in an area of mixed land uses including the urban area of Mosgiel. Looking at the proposal from a wide viewpoint, the new dwelling will be a single new dwelling in an area with numerous houses already well-established. The effects of the residential activity, including noise, lighting and the general comings and goings of the occupants will have little impact on the wider environment. The access to the subject site is via a suburban residential street where the extra traffic generated will be minor in terms of vehicle movements overall and will have very little cumulative effect on the transportation network.
- [141] Looking at the proposal more closely in terms of its Rural zoning and, in particular, the current distinct line between the residential area of Mosgiel and the farm land, the additional dwelling will create a blurring of the zone boundary. This blurring is not present currently. Even so, as a single dwelling, the new house is unlikely to have cumulative effects which change the nature of the Rural-zone in this location to the point where it is not recognised as being rural. The house will have limited visual effects, and the proposal is minor in scale.

Sustainability (6.7.1)

- [142] 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.
- [143] It is my opinion that the proposed subdivision will have effects on the amenity values and character of this area which are less than minor, given the limited visibility of the proposed building platform and the site overall. Any additional residential effects will be minimal in the context of the nearby residential development and the railway corridor.
- [144] The application has been promoted as a means of separating the historic home from the productive land, thereby sustaining the productive worth of the property. I do not necessarily agree that this will be achieved, mainly because of the amount of land being retained within Lot 2 along with the house, and the fact that a new house with curtilage will be established within Lot 1 thereby reducing the amount of productive land overall. The subject site is already undersized, and two smaller lots, both of lifestyle size, is not, in my opinion, sustainable use of the rural productive land. This subdivision is not what the District Plan or Proposed Plan anticipates for this land.
- [145] The proposed subdivision will utilise existing roading, and does not require any new roading development. The existing roads, being urban streets up to road standard, will accommodate the additional traffic generated by the proposed subdivision without issue. Accordingly, the proposal is considered to be sustainable use of the transportation network.
- [146] The Consents and Compliance Officer, Water and Waste Services Business Unit, has not identified any concerns about the sustainability of the existing service infrastructure. Proposed Lot 1 will need to be self-serviced and, as such, there are no water or sewage disposal demands on Council's infrastructure. The servicing of the existing house on Lot 2 is already established and not changing.

- [147] Council's Consulting Engineer, MWH, did not identify any natural hazards of concern when developing Lot 1 except for the alluvial soils and the potential for flooding. Both these issues can be addressed through appropriate foundation design and minimum floor level. The proposed development of Lot 1 is not anticipated to exacerbate any natural hazards in this location.
- [148] Overall, I am of the opinion that the proposed subdivision is not sustainable use of Dunedin City's physical and natural resources in respect of rural land productivity. It is sustainable use of Council infrastructure and roading.

Summary

- [149] The proposed subdivision and residential development of Lot 1 will have limited adverse effects as it will introduce one additional house into an area with restricted public views. It is close to Mosgiel township, and the additional noise, traffic and activity associated with the new house will be unnoticeable in respect to the existing environment. The visual effects of a new house will be less than minor, provided the house is sited to the south of the existing driveway and away from residential neighbours. However, the fragmentation of a small rural block into two lifestyle properties at the edge of Mosgiel will have more than minor adverse effects on the rural productivity of the land and high class soils, and runs the risk of blurring the urban/rural divide at this location which is currently a very distinct boundary.

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

- [150] 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

	Objective/Policy	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	It is my opinion that the proposal will not maintain the character or amenity values of the Rural zone, but will not have adverse effect the amenity values of the immediate area as there is only one additional house proposed, and it will be situated in an area of limited visibility. The subject site is located at the urban edge of Mosgiel, but there is a clear demarcation between residential and rural land which this proposal will not respect. Therefore the proposed subdivision is considered to be inconsistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The new lot will be self-serviced, and will utilise existing roading infrastructure. Accordingly, I consider that the proposed subdivision is consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	

Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	The natural and physical land resource is not appropriately protected as it will fragment a small rural property, creating two lots with limited productive worth. The purpose of the subdivision is to separate the historic house from the bulk of the land in order for the owner to be able to concentrate on the care of the listed building. The listed building has local significance, although many locals do not know of its existence. The proposal is considered to be inconsistent with this objective and policy.
Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The residential use of the land is not considered to be incompatible with rural land uses generally, but is not at a density which maintains an open character and productive worth of the land. There is no expectation that the proposed residential activity will be any more incompatible with rural land uses than the residential activity which is already present in this location, but it might create issues for the operation of the adjacent railway. The proposal is considered to be inconsistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: <ul style="list-style-type: none"> a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan. 	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
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.	

Rural/ Rural Residential

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 6.2.1	Maintain the ability of the land resource to meet the needs of future generations.	The subject site is undersized, and the new lots will be even smaller and inconsistent with the expectations for the Rural zone. While the subdivision is promoted as seeking to maintain the productive worth of the land by separating it from the house, I do not consider that the subdivision will achieve this. It will fragment the land resource, and is not focussed on the productive worth of the land. The proposal is considered to be inconsistent with this objective and these policies.
Policy 6.3.1	Provide for activities based on the productive use of rural land.	
Policy 6.3.2	Sustain the productive capacity of the Rural zone by controlling the adverse effects of activities	

Policy 6.3.3	To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.	The proposed subdivision will fragment an existing undersized Rural site, and will create two lifestyle blocks where residential activity is the primary activity. It will introduce residential activity next to the railway line, and does not respect the anticipated density of development for the Rural zone. The proposal is considered to be contrary with this policy.
Policy 6.3.10	Protect areas that contain 'high class soils', as shown on the District Plan Maps 75, 76, and 77, in a way which sustains the productive capacity of the land.	The application is promoted as seeking to preserve the productive use of the land, but fragments the small farm and will establish a new house on high class soils. The proposal is considered to be inconsistent with this policy.
Objective 6.2.2	Maintain and enhance the amenity values associated with the character of the rural area.	The proposed subdivision is considered to be inconsistent with this objective and policy. It will introduce development into the Rural zone at a density greater than that anticipated by the District Plan. The Rural zone in this case is at the urban edge of Mosgiel, and makes use of the urban transportation network but not the services. The additional residential dwelling on-site will be situated in a location of limited visibility from most public viewpoints, and in this regard, the proposed development will not impact significantly on the amenity values and character of the zone and rural area. However, it will commence a blurring of the Residential 1 and Rural zones along this western edge of Mosgiel which currently has a very clean demarcation of the zone boundaries.
Policy 6.3.5	Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to: a) a predominance of natural features over human made features; b) high ratio of open space relative to the built environment; c) significant areas of vegetation in pasture, crops, forestry and indigenous vegetation; d) presence of large numbers of farmed animals; e) ... f) Low population densities relative to urban areas; g) Generally unsealed roads; h) Absence of urban infrastructure.	
Policy 6.3.6	Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	
Objective 6.2.4	Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	The proposed subdivision and development will sustainably manage the roading network and services infrastructure. No new roading is required and traffic generated by the additional house is within the capacity of the existing urban roading. There will be no demand of urban services. Accordingly, the proposal is considered to be consistent with this objective and policy.
Policy 6.3.8	Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	
Objective 6.2.5	Avoid or minimise conflict between different land use activities in rural areas.	The proposals are considered to be consistent with this objective. The proposed residential activity is not expected to conflict with any of the adjoining rural activities.
Policy 6.3.9	Ensure residential activity in the rural area occurs at a scale enabling self-sufficiency in water supply and on-site effluent disposal.	The proposed subdivision will create one additional lot and residential dwelling site that can be self-sufficient for water supply and on-site effluent disposal. The proposal is considered to be consistent with this policy.

Policy 6.3.11	Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	Residential activity is an expected component in the Rural Zone, although not on such small sites. The issue is not so much whether the residential activity is inappropriate for the zone, but rather whether it is appropriate for this location, and at this density. It is my opinion that the development proposed is not appropriate at this density, and therefore is inconsistent for this subdivision proposal although the adverse effects are expected to be minor or less than minor.
Policy 6.3.12	Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	A building platform has been proposed for Lot 1 in a position which is likely to minimise conflict with residential neighbours but could result in the railway having adverse effects on the rural amenity of the new house. The proposed subdivision and house site will reduce the ability of the land to be used for productive purposes by fragmenting the site and adding a house. The proposal is considered to be inconsistent with this policy.
Policy 6.3.14	Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to: (a) amenity values. (b) rural character (c) natural hazards, (d) the provision of infrastructure, roading, traffic and safety, or (e)	It is my view that the subdivision of the subject sites will have cumulative effects in terms of rural character which are minor, and the proposal is therefore inconsistent with this policy.

Townscape

Provision	Objective/Policy	Consistent or contrary with planning provisions
Objective 13.2.3	Ensure that buildings and parts of buildings, places and sites which are of heritage value are recognised and protected.	The proposed subdivision is promoted as a means of protecting and maintaining the listed Johnstone Farmhouse by separating it from the bulk of the farm land, thereby allowing the owner to concentrate on the house. The proposed subdivision does not negatively impact on the heritage dwelling, and in this respect the subdivision is consistent with this objective and policy. I question, however, whether or not the subdivision is necessary in order to achieve this objective.
Policy 13.3.10	Encourage restoration, conservation, continued use and re-adaptive re-use of buildings with townscape and heritage values.	
Policy 13.3.6	Avoid the demolition of buildings identified parts of buildings and other structures which are of townscape or heritage value.	No demolition or building works are anticipated as part of this subdivision. The proposal is consistent with these policies.
Policy 13.3.8	Exposed stone and brick on the facings of buildings within townscape or heritage precincts are to be retained with their natural appearance.	
Policy 13.3.10	Encourage restoration, conservation, continued use and adaptive re-use of buildings with townscape and heritage values.	The proposal seeks to maintain the existing listed house on proposed Lot 2. The proposal is considered to be consistent with this policy.
Policy 13.3.13	Identify for protection buildings, structures, site and other features which have heritage value.	This is a process policy and as such the proposal will not be consistent or contrary. The house has already had features identified as being worthy of protection by Schedule 25.1 of the District Plan.

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 has not identified any concerns about the development of the proposed building platform subject to a minimum floor level being set. The applicant has suggested the same level as the existing house. Provided the minimum floor level is appropriate for this location given the low-lying land and the proximity of Owhiro Stream, the proposal is expected to be consistent with this objective and policy.
Policy 17.3.3	Control development in areas prone to the effects of flooding.	
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.	No earthworks have been applied for as part of this subdivision and land use proposal, but it is likely earthworks will be required to form the new building platform on Lot 1. There will be no risk to people or property as a result of these earthworks. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Subdivision

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	The proposal seeks to subdivide land an already undersized Rural-zoned site into two smaller rural blocks. This is not considered to be sustainable subdivision of the Rural zone as it does not create rural properties consistent with the expectations of the District Plan. In respect of further development, the applicant proposes a no further subdivision or development restriction on the new titles so as to avoid more fragmentation. This is desirable given the zoning, but may not be conducive to the logical expansion of Mosgiel township. Overall, the proposal is contrary to 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 limitations are identified and will be managed in a sustainable manner.	There are no indications that this land is unsuitable for subdivision. This policy is concerned with process.
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	The Water and Waste Services Business Unit has not identified any issues with the self-servicing of Lot 1. The proposal is considered to be consistent with this policy.
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	No physical limitations preventing subdivision or development have been identified for this land. The proposal is expected to be consistent with this objective.

Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	The land is quality productive land but the subject site is small and unlikely to be an economic farm unit. The proposed subdivision will not improve this situation. While the applicant seeks to separate the land from the historic house, the purpose is somewhat compromised by the fact so much land will be retained in the house lot. The proposal is considered to be contrary to 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.
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 seeks to place the historic Johnstone Farmhouse onto its own site to allow the owner to concentrate on the protection of the house. The large house lot will largely retain the spacious setting of the house although Council's Heritage Planner does not agree. If the site is to be subdivided, it is my view that the heritage values of the house will be preserved. The proposal is considered to be consistent with this objective.
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	The proposal is a relatively simple one in terms of infrastructural needs. The subdivision will create one vacant site suitable for development with one house. The house is to be self-serviced and will have no impact on Mosgiel's infrastructure. There is no need for additional roading or accesses onto the road. The proposal is considered to be consistent with this objective and policy.
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	There are no concerns that the disposal of effluent and stormwater could destabilise the land. The proposal is considered to be consistent with this policy.

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.	The proposed subdivision will create only one additional lot and one additional residential activity. The subject site is accessed via a residential street where one extra residential dwelling will generate minimal traffic compared to the existing traffic use of Ashton Street. There is no need to form a new access to proposed Lot 1, and the proposed subdivision will have no real effect on the transportation network. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Proposed Plan

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

Strategic Directions

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 2.2.1	The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low.	The proposed subdivision is considered manage the risk to the Mosgiel community and the subject site from natural hazards. The proposed residential activity for Lot 1 is not an inappropriate land use for this land, and the existing residential activity of proposed Lot 2 has been in place for over a century. The only risk from natural hazards is expected to be flooding and seismic matters which can be largely mitigated by appropriate foundation construction. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.1.1	Manage land use, development and subdivision based on: <ol style="list-style-type: none"> 1. the sensitivity of activities, by identifying them as: a sensitive activity, a potentially sensitive activity, or a least sensitive activity; 2. the risk from natural hazards to people, communities and property, considering both the likelihood and consequences of natural hazards, as shown in Table 11.1 in Section 11. 	
Objective 2.2.2	Dunedin is well equipped to manage and adapt to any changes that may result from volatile energy markets or diminishing energy sources by having: <ol style="list-style-type: none"> 1. increased local electricity generation; 2. reduced reliance on private motor cars for transportation; and 3. increased capacity for local food production. 	The proposal does not increase capacity for local food production as it takes land with high class soils in close proximity to Mosgiel, fragments it by subdivision, and introduces an additional residential activity to the land. The subdivision is inconsistent with the zoning, and is not focussed on the creation of productive rural blocks. The proposal is considered to be inconsistent with this objective.
Policy 2.2.2.1	Identify areas important for food production and protect them from activities or subdivision (such as conversion to residential-oriented development) that may diminish food production capacity through: <ol style="list-style-type: none"> 1. use of zoning and rules that limit subdivision and residential activity, based on the nature and scale of productive rural activities in different parts of the rural environment; 2. consideration of rural productive values in identifying appropriate areas for urban expansion; and 3. identification of areas where high class soils are present (high class soils mapped area); and 4. use rules that require these soils to be retained on site. 	
Objective 2.3.1	Land that is important for economic and social prosperity, including industrial areas, major facilities, key transportation routes and productive rural land, is protected from less productive competing uses or incompatible uses.	The proposal does not protect the rural productive land of the subject site from less productive use. The proposal is considered to be inconsistent with this objective.
Policy 2.3.1.2	Maintain or enhance the productivity of farming and other activities that support the rural economy through: <ol style="list-style-type: none"> 1. rules that enable productive rural activities; 2. rules that provide for rural industry and other activities that support the 	This is a policy concerned with process. In terms of what the rules are meant to achieve, it is noted that the proposed subdivision does not enable productive rural activity, does not provide for rural industry, does not create sites which meet the nature and scale of productive rural activities, does not support productive

	<p>rural economy;</p> <p>3. zoning and rules that limit subdivision and residential activity based on the nature and scale of productive rural activities in different parts of the rural environment;</p> <p>4. rules that restrict residential activity within the rural environment to that which supports productive rural activities or that which is associated with papakāika;</p> <p>5. rules that restrict subdivision that may lead to land fragmentation and create pressure for residential-oriented development;</p> <p>6. rules that prevent the loss of high class soils; and</p> <p>7. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location and support rural activity.</p>	<p>rural activities, and leads to land fragmentation.</p>
--	--	---

Transportation

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 6.2.1	Transport infrastructure is designed and located to ensure the safety and efficient of the transport network for all travel methods while a) minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b) meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which it is located.	The new lot will utilise the existing transportation infrastructure and will not place additional demand on this at a level which creates adverse effects on the network. The access road is a residential street, and will be used for one additional residential unit. It is already used for rural activity and this will not change significantly, if at all. 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 and no new accesses created.
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 will not change the safety and efficiency of the transport network of Ashton Street and the other suburban streets in the area. There is no alterations being made to the transportation network, and very little additional traffic generated in comparison to the existing use of the roads. The proposal does not require the creation of a new access, or the upgrading of the existing access. The proposal is considered to be consistent with this objective and policy.
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.	

Scheduled Trees

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective	The contribution made by significant	The subject site has several listed trees. All

7.2.1	trees to the visual landscape and history of neighbourhoods is maintained.	trees are to be retained and the proposal will maintain the visual landscape and history of the Johnstone Farmhouse site. The proposal is consistent with this objective.
Policy 7.2.1.4	Require earthworks, network utilities activities, new roads and additions and alterations to roads, buildings, structures, and site development that involves the laying of an impermeable surface, to be set back from a scheduled tree an adequate distance to avoid: <ol style="list-style-type: none"> 1. damage to the scheduled tree; and 2. potential future adverse effects caused by the tree on amenity values, structural integrity of buildings or infrastructure, or safety that may lead to future demand to remove the tree. 	All the new development works will be set back from all the listed trees on the subject site. There will be no listed trees within proposed Lot 2, and as such, the proposed building site, or any other location Lot 2 will be clear of all listed trees. The proposal is consistent with this policy.

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 subject site is a Rural-zoned property at the edge of urban Mosgiel. The existing dwelling as an 'out-of-zone' water connection, but is self-serviced for wastewater and stormwater drainage. The new dwelling on proposed Lot 1 will need to be fully self-serviced. As such, the subdivision and development proposal is considered to be consistent with this objective and policy except that it is very possible the new owners of Lot 1 will seek to connect to the reticulated water supply of Mosgiel. Any such application can be declined by Council, and the granting of consent cannot be presumed. Because of this possibility that a request for a water connection for Lot 1 will eventuate, and possibly a request to connect to the Council's foul sewer system, I consider the proposal is inconsistent with this objective and policy
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: <ol style="list-style-type: none"> 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future pressure for unplanned expansion of that public infrastructure. 	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The proposed development proposal is considered to maintain people's health and safety. There will be minimal effects on neighbours resulting from the proposed subdivision and new house. However, the residents of the new house will be within 70m of the Railway corridor (although more than 70m from the railway line itself). There is the risk that there will be adverse noise and vibration effects unless Council imposes a building standard for noise insulation as a condition of consent. The proposal is considered to be inconsistent with this objective and policies.
Policy 9.2.2.1	Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not possible, ensure any adverse effects would be insignificant.	
Policy 9.2.2.2	Require buildings used for noise sensitive activities in the following areas to provide adequate acoustic insulation to avoid significant effects from the higher noise environment anticipated in these areas: <p>...</p> <ol style="list-style-type: none"> 1.1. within 70m of a railway line. 	
Policy 9.2.2.7	Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public infrastructure where the land use, development or the size and shape of resultant sites from a subdivision, ensure wastewater and stormwater can be disposed of in such a way that avoids adverse effects on the	Proposed Lot 1 will be of a size and shape where the new residential dwelling can be fully self-serviced without having adverse effects on the health of the residents or any adjoining neighbour. The proposal is considered to be consistent with this policy.

	health of people on the site or on surrounding sites or, if avoidance is not possible, ensure any adverse effects would be insignificant.	
Policy 9.2.2.9	Require all new residential buildings, or subdivisions that may result in new residential buildings, to have access to suitable water supply for fire-fighting purposes.	The proposed dwelling will need to be self-serviced for fire-fighting although the proposed building platform is within 135m of the fire hydrant in Ashton Street and it is unlikely that the Fire Service will make the distinction between an in-zone and out-of-zone residential activity for water if the situation is critical. The proposal is considered to be consistent with this policy.

Natural Hazards

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 11.2.1	The risk from natural hazards, including climate change, is minimised, in the short to long term.	There is no reason to suppose that the proposed subdivision and development will increase the risk from natural hazards. The proposal is considered to be consistent with this objective.
Policy 11.2.1.12	In all hazard overlay zones, or in any other area that the DCC has good cause to suspect may be at risk from a natural hazard (including but not limited to a geologically sensitive mapped area (GSA)), only allow earthworks - large scale or subdivision activities where the risk from natural hazards, including on any future land use or development, will be avoided, or no more than low.	No future earthworks have been identified as part of this application, but some earthworks will be required to develop new Lot 1. The site is almost level, and it is unlikely that the future earthworks will impact on surface flows of water. The risks are considered to be low. On the basis of known information, the proposal is considered to be consistent with these policies.
Policy 11.2.1.15	Only allow earthworks in a swale mapped area and earthworks - large scale in hazard (flood) overlay zones, where they will not: <ol style="list-style-type: none"> 1. obstruct or impede flood water, unless part of an approved natural hazard mitigation activity; and 2. create, exacerbate, or transfer risk from natural hazards. 	

Heritage

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 13.2.1	Scheduled heritage buildings and structures are protected.	The existing house on-site is a protected structure. The proposed subdivision does not change this fact. The proposal is consistent with this objective.
Policy 13.2.1.1	Encourage the maintenance, on-going use and adaptive re-use of scheduled heritage buildings, including by enabling repairs and maintenance, earthquake strengthening, and work required to comply with section 112 (Alterations) and section 115 (Change of Use) of the Building Act 2004 where it is done in line with policies 13.2.1.2-13.2.1.4.	The applicant seeks to subdivide so as to be able to concentrate on the maintenance of Johnstone Farmhouse rather than the farming activity of the site. The Council is supportive of the upkeep of the heritage structure and this proposal does not prevent that from happening. However, I am not convinced that it is necessary to subdivide in order for this protection to occur. I consider the proposal to be inconsistent with this policy.
Policy 13.2.1.6	Only allow subdivision of sites containing scheduled heritage buildings and scheduled heritage structures where the subdivision is designed to: <ol style="list-style-type: none"> 1. provide sufficient curtilage around the 	The proposed subdivision will provide a site of 3.55ha around Johnstone Farmhouse. This is sufficiently large enough to provide ample curtilage and to preserve all the associated gardens and accessory buildings. Council's

	<p>scheduled heritage building or scheduled heritage structure to protect heritage values; and</p> <p>2. ensure any future land use or development will maintain existing views of scheduled heritage buildings or scheduled heritage structures from adjoining public places, as far as is practicable.</p>	<p>Heritage Planner does not consider that the subdivision preserves the heritage setting of the house, but Heritage New Zealand believes the subdivision will retain the farming environment of the site. The proposal is considered to be consistent with this policy.</p>
Objective 13.2.2	The heritage values of scheduled heritage sites are protected.	The heritage values of the scheduled Johnstones Farmhouse is considered to be protected by this proposal which provides generous curtilage around the house, garden and outbuildings, and does not make any changes to the house itself. The proposal is consistent with this objective and policy.
Policy 13.32.2.2	<p>Only allow subdivision of scheduled heritage sites where:</p> <p>1. the subdivision is designed to ensure any future land use or development respects the relationship between scheduled heritage buildings, scheduled heritage structures and open space;</p> <p>2. scheduled heritage sites that are primarily open space are protected from unnecessary development; and</p> <p>3. the heritage values for the site are maintained.</p>	

Rural Zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 16.2.1	Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	The subdivision does not seek to reserve the Rural zone for productive rural activities. The subdivision will separate approximately two-thirds of the farmland from the existing house, and will create a new site with a new house. The existing rural production is likely to continue on Lot 1, but there will be a new residential house, with curtilage and access formation, established within Lot 1. The subdivision will fragment an already small rural block. The proposal does not support farming. Accordingly, the proposal is considered to be contrary with this objective.
Policy 16.2.1.5	Limit residential activity, with the exception of papakāika, in the rural zones to a level (density) that supports farming activity and achieves Objectives 2.2.2, 2.3.1, 2.4.6, 16.2.2, 16.2.3 and 16.2.4 and their policies.	The proposal to create two undersized Rural sites does not support farming activity and does not achieve most of the listed objectives. The proposal is considered to be contrary to this policy.
Policy 16.2.1.7	Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	The proposal will establish a second residential unit on land which is already undersized. The existing house is not a surplus dwelling. The proposal is contrary to this policy.
Objective 16.2.2	<p>The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure:</p> <p>1. the potential for reverse sensitivity effects from more sensitive land uses (such as residential activities) on other permitted activities in the rural zones is minimised;</p> <p>2. the residential character and amenity of adjoining residential zones is maintained; and</p> <p>3. a reasonable level of amenity for</p>	The proposal will largely minimise conflict between activities in the Rural zone and the adjoining land uses except possibly for the railway. This can be mitigated through appropriate building design. The proposal is considered to be inconsistent with this objective.

	residential activities in the rural zones.	
Policy 16.2.2.3	Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The proposed building site for Lot 1 will have few residential neighbours and will be more than 40.0m from their boundaries. The proposal is considered to be consistent with this policy.
Objective 16.2.3	The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; b) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c) buildings that are rural in nature, scale and design, such as barns and sheds; d) a low density of residential activity, which is associated with rural activities; e) a high proportion of land containing farmed animals, pasture, crops, and forestry; f) significant areas of indigenous vegetation and habitats for indigenous fauna; and g) other elements as described in the character descriptions of each rural zone located in Appendix A7.	The proposed subdivision will intensify the density of development of this part of the Rural - Taieri zone to a level not anticipated by the Proposed Plan. It will reduce the ratio of open space to residential activity, but will have limited visibility from many public viewpoints. The proposal is considered to be inconsistent with this objective.
Policy 16.2.3.1	Require buildings, structures and network utilities to be set back from boundaries and identified ridgelines, and of a height that maintains the rural character values and visual amenity of the rural zones.	The subject site has limited visibility from public viewpoints although it has numerous residential neighbours which will be able to view the site. If the dwelling of Lot 1 is placed on the proposed building site, few neighbours will see the house. The proposal is considered to be consistent with these policies provided the building platform stays where it is currently positioned.
Policy 16.2.3.2	Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	
Policy 16.2.3.8	Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.	The subdivision is not considered to maintain or enhance the rural character and visual amenity of the zone. The proposal is contrary to this policy.

[151] As the Proposed Plan is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan.

[152] It is my view that the proposal is consistent with many of the objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, heritage, natural hazards and transportation. However, it is inconsistent with those of amenity, rural productive worth, sustainability, natural resources, and conflict and reverse sensitivity. It is considered to be contrary to the subdivision of rural land and the preservation of rural land use of the Proposed Plan objectives and policies.

Assessment of Regional Policy Statement and Plans

[153] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. 26 notices of appeal were then received and the parties are now in the mediation period.

Any issues not resolved through mediation will become the subject of an Environment Court hearing.

[154] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 11: Natural Hazards. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:

- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.2: Economic wellbeing.
- Policy 1.1.3 Social and cultural wellbeing and health and safety.
- Objective 3.1: Otago's natural resources are recognised, maintained and enhanced.
- Policy 3.1.7: Soil values.
- Objective 3.2: Otago's significant and highly values natural resource are identified and protected or enhanced.
- Policy 3.2.17: Identifying significant soil.
- Policy 3.2.18: Managing significant soil.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way.
- Policy 4.3.1: Managing infrastructure activities.
- Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity.
- Policy 5.2.1: Recognising historic heritage.
- Policy 5.2.2 Identifying historic heritage.
- Policy 5.2.3: Managing historic heritage.
- Objective 5.3: Sufficient land is managed and protected for economic production;
- Policy 5.3.1: Rural activities.

7. DECISION MAKING FRAMEWORK

Part II Matters

[155] Given there is no ambiguity, incompleteness or illegality in the operative Dunedin City District Plan, it may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below, and in my opinion, there is no inconsistency with Part II.

[156] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:

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

[157] With regard to Section 5(2)(a), it is considered that the proposed subdivision will not maintain the potential for rural use of the natural and physical land resource. It does

not preserve the farmland in a single parcel but will fragment it between the two residential activities on what will become two lifestyle properties.

- [158] With regard to Section 5(2)(c), it is considered that the proposed subdivision and development will have adverse effects on rural productivity, but few adverse effects in terms of the rural environment.
- [159] With regard to Section 6(f), the proposal will maintain the existing listed farmhouse in its present form but with less land. In this respect, the proposal meets section 6(f).
- [160] With regard to Section 7(b), it is considered that the proposed subdivision will fragment Rural-zoned land into significantly undersized Rural-zone sites, and will not maintain the rural land resource.
- [161] With regard to Section 7(c), it is considered that the proposed subdivision and development with a single additional residential unit will have few effects on the amenity values of the area, particularly if the house is confined to the location of the proposed building platform. There is very little visibility of the site from public viewpoints, and few residential neighbours will be able to see the new house.
- [162] With regard to Section 7(f), it is considered that the proposed subdivision will change the quality of the environment to that of a different zoning, in conflict with the District Plan provisions.
- [163] With regard to Section 7(g), it is considered that the Rural land resource is of finite character. The subdivision proposal seeks to fragment an already undersized Rural-zoned site into even small rural lots. It will largely preserve the productive potential of the rural land but will split it between two landowners, thereby reducing its economic sustainability.

Section 104

- [164] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment of the subdivision and development proposal will have more than minor adverse effects on the rural productivity of the land and high class soils, and runs the risk of blurring the urban/rural divide at this location which is currently a very distinct boundary. It will have less than minor effects in terms of visual effects.
- [165] 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 subdivision and development proposal is considered to be generally consistent with most of the relevant objectives and policies of the District Plan, except where inconsistent with amenity, natural resources, mixing of land uses, productive worth, and conflict between activities. The proposal is considered to be contrary to the subdivision of rural land and rural land use. Overall, I consider the proposal to be inconsistent with the relevant objectives and policies of the District Plan, but contrary to some key objectives and policies of the Proposed Plan.
- [166] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [153] and [154] of this report it was concluded that the application is 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.
- [167] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent

administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

- [168] Another matter relevant to the Committee is the consistent administration and interpretation of the District Plan. Further, the application is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.
- [169] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:

"...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan."

- [170] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an 'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

"If the granting of one consent was likely to cause a proliferation of like consents and if the ultimate result would be destructive of the physical resources and of people and communities by reason of causing unnecessary loadings on services or perhaps by reason of causing under-utilisation of areas where services etc. have been provided to accommodate such activities, then the Council may well be able to refuse an application having regard to that potential cumulative effect."

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

- [172] In paragraph 11 of the decision Judge Smith stated "... we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique." This was added to in paragraph 20 where the Judge stated, "... therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone."

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

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

- [174] The Committee should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current subdivision proposal in

this regard. If the Committee deems there to be a real threat from this type of proposal being approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can be avoided. However, *Mason Heights Property Trust v Auckland Council (C175/2011)* noted that the true exception test is not mandatory:

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

- [175] In terms of actually providing a 'true exception' argument for this proposal, the applicant believes that it is acceptable planning practice to isolate and identify heritage, cultural, archaeological, significant or hazard sites. The minimum site size requirement becomes less significant in such cases as the primary purpose of the subdivision is to define the site with the special feature. The applicant considers that the subject site is significant in terms of the City's heritage and that it has a high heritage value because of the presence of Johnstone Farmhouse. *"There are no other even vaguely similar sites in the locality."*
- [176] One of the submitters does not consider that the house is unique, and that there are other sites on the Taieri with historic homesteads that are not necessarily listed. The submitter believes that another owner could apply for the scheduling of their house, and then subdivide in a like manner to this proposal. She also questions the value of the house for the community given that many people are unaware that Johnstone Farmhouse exists and have no access to it.
- [177] I am aware of a number of very old and large farmhouses on the Taieri, most of which are not listed heritage structures. Some are on large productive farms and could be subdivided in a like-manner to Highcliff Road so as to create small house sites and complying balance lots. Many are already on undersized titles where subdivision is less likely, although if the balance lot need not be a complying Rural-zoned site, there is effectively no minimum site size to start with.
- [178] Those houses on the Taieri which are listed in the District Plan, such as the Poplars at Woodside, Abbotsford Farm Steading in Allanton Road, and several along State Highway 1 at East Taieri, are already on small rural sites. There is limited potential for further subdivision of these properties, and the proposed subdivision is unlikely to set a precedent of any consequence in terms of these existing Taieri rural heritage buildings. The exception might be the Hollybrook farm buildings on Maungatua Road which are on a large productive farm, but these are not a residence and the same argument will not necessarily apply.
- [179] I agree that if the purpose of a subdivision is to separate a heritage building from its associated farm land, then there is limited opportunity for an adverse precedent to be set simply because there are few scheduled farmhouses on the Taieri, and those that exist within the Rural zone are already on undersized sites. If the purpose is to put the historic house on a smaller site (but one which includes farm land) and to create a vacant site suitable for future residential activity with some farming activity (but not at a scale where the site is a complying rural property), then there is plenty of opportunity for other properties to be subdivided in a like manner. In fact, proposed Lot 2 of this subdivision could be subdivided again using the very same argument. It is one thing to remove a historic house from a large property if the balance land is large enough to establish a new house without breaching density, and quite another when the balance land is an undersized site and the new residential activity significantly breaches density.

- [180] The Proposed Plan rule for subdivision of rural land is in effect and is far more stringent than the current Plan's rules. This proposal is clearly outside the expectations of the Proposed Plan for the rural zones, and should the Committee be of a mind to grant consent, it needs to be careful that the granting of consent will not undermine the new rules. While the Proposed Plan does provide for the subdivision of surplus housing onto new undersized sites, this subject site is far too small for those provisions to apply. The Proposed Plan also exempts rural lots from meeting the minimum site size in certain circumstances (Rule 16.7.4.2), none of which are to do with heritage buildings.
- [181] An applicant will often argue that the granting of consent will not set a precedent while at the same time as referring to past decisions of Council for support. The applicant's agent has identified the subdivision of 949 Highcliff Road as providing a comparable example where the subdivision was acceptable despite the undersized site being created. As discussed above in the section on Archaeological Sites, I consider that there are two notable differences between that consent and this proposal, both differences being in regard to the new sites. The proposed house site of Lot 2 is too large to be considered purely as a house site, and the balance lot of Lot 1 is too small to be a complying Rural-zoned site. While the subdivision of 949 Highcliff Road cut the house from the property and maximised the amount of land left in the rural block, this proposal essentially creates two lifestyle blocks each with an element of residential and rural character.
- [182] I consider that any subdivision proposal which fragments an existing undersized Rural-zoned property into two small rural sites needs to have a strong true-exception element in order to undermine the Proposed Plan. I am not convinced that this property has that true-exception argument because, although few properties have listed farmhouses to start with, I do not consider that the subdivision really separates the house from the farm land; it merely places the heritage structure on a smaller site. While it might be highly desirable to provide the house with an appropriate context by retaining generous curtilage, the applicant has not explained how the existing undersized Rural-zoned site fails to do that already.

Non complying status (s104D)

- [183] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.
- [184] It is my opinion that the subdivision will have adverse effects which are more than minor in respect of rural productivity. The proposal is inconsistent with the objectives and policies of the District Plan but contrary to some key objectives and policies of the Proposed Plan regarding rural subdivision and rural productive land. While the weighting of the two Plans currently lies with the operative District Plan, the provisions of the Proposed Plan regarding rural subdivision are in effect, and are much more restrictive in their intentions for Rural zoned land.
- [185] In terms of the District Plan, I consider that the proposal will fail to meet the effects test of Section 104D, but will meet the objectives and policies test, and the Committee is in a position to consider the granting of consent. However, in terms of the Proposed Plan, the proposal will fail both tests, which would not allow the Committee to grant consent. Section 104D requires the objectives and policies of both Plans to be considered, in which case, the proposal will fail the gateway tests. The Committee may form a different view, and as such, I have continued to assess the proposal as if consent might be granted.

8. RECOMMENDATION

Subdivision SUB-2017-5

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and Proposed Plan, the Dunedin City Council **declines** consent to the **non-complying** activity for the subdivision of the land legally described as Lot 1 DP 304960 (CFR20454) into two lots at 25 Ashton Street, Mosgiel.

Land Use LUC-2017-52

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of new residential activity on under-sized Lot 1 created by SUB-2017-5 at 25 Ashton Street, Mosgiel.

Land Use LUC-2017-236

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **declines** consent to a **non-complying** activity for the establishment of the existing residential activity on under-sized Lot 2 SUB-2017-5 at 25 Ashton Street, Mosgiel.


Should the Committee be of a mind to grant consent, however, I have recommended conditions for consent as Appendix 1 of this report.

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the subdivision and development of 25 Ashton Street will be more than minor for the following reasons:
 - a) The proposed subdivision will fragment an undersized Rural-zoned lot into two even smaller rural sites. The new lots will be more consistent with lifestyle units where the productive worth of the land is secondary to the residential use. While the 3.55ha house site of Lot 2 will provide the existing historic homestead with generous curtilage, thereby preserving the setting of the house and outbuildings, the fact there is still 3.55ha of land within the house site means that the owner will still have to undertake farming activity. This is not consistent with the rationale of the subdivision proposal.
 - b) The Proposed Plan minimum site size rule is in effect and sets minimum site size for the Taieri Plains at 40.0ha. This proposal does not reflect the direction that the Proposed Plan seeks to take for rural land which is to keep in it large productive properties. In this case, the subject site is close to Mosgiel township, and contains high class soils. It therefore has potential as productive land and has been associated with market gardening in the past. The subdivision will create two sites which are unlikely to be used for intensive farming. It is not sustainable use of the Taieri's productive land resource.
 - c) The applicant has promoted a building platform on Lot 1 which has been selected to minimise effects on residential neighbours. I agree that the proposed building platform will largely achieve this goal, and few residential neighbours will be aware of the new house. However, I also believe that it will be difficult to confine a house to this specific location should the new property owner seek to build elsewhere on Lot 1 as there is no strong resource management reason for containing the house on such a tight building platform.

- d) The proposed subdivision so as to create two undersized sites will have effects on rural character which are more than minor. Although the site has limited visibility from public viewpoints, it is noted that the urban/rural demarcation of Mosgiel is very clean on this side of town. The existing rural land resource remains in rural use. This subdivision will blur the boundary between urban and rural Mosgiel by introducing an additional house at the town edge on an undersized site. This has the potential to change the rural character of this area.
- e) The Council does not have the means to enforce the maintenance of Johnstone House as the District Plan does not protect the interior, and I do not believe it is in the interests of Council to take on such a role. Therefore, in terms of actual effects, the proposed subdivision does not increase the degree of protection for the heritage structure in any way.
- f) There is potential for conflict and reverse sensitivity issues to arise due to the proximity of the railway to the house site of Lot 1. This can be mitigated through building design, but this has not yet been finalised between the applicant and KiwiRail.
2. It is correct that there are few properties on the Taieri with historic homesteads which could be subdivided in a like manner as most are already on small Rural-zoned sites. In that regard, the proposal is unlikely to set an undesirable precedent provided there is an historic homestead on the site. However, I consider proposed Lot 2 to be more of a lifestyle block than a house site, and proposed Lot 1 also has a strong lifestyle character rather than a small farm block. The proposed subdivision could set a precedent for residential intensification of rural land in close proximity to urban settlements.
3. The Proposed Plan is subject to submissions and the new zoning, with its minimum site size, has not been finalised. While greater weight is to be given to the current District Plan, the Council needs to be careful of undermining the integrity of the Proposed Plan this early in the process. There are submissions both opposing and supporting the new minimum site sizes, so it cannot be assumed that these will be reduced as a result of the submission process.
4. The proposal is considered to be inconsistent with many of the objectives and policies of the District Plan relating to amenity and the mixing of land uses. It is contrary to those regarding of the District Plan and Proposed Plan the subdivision of Rural land and the maintenance of rural productive land. The subject site is already an undersized site, and I do not consider it necessary for the land to be further subdivided in order to protect the heritage homestead on-site.
5. Overall, it is considered that the proposal fails both branches of the Section 104D test of the Act when assessed against the provisions of both the District and Proposed Plans. Accordingly, I consider that the Committee is unable to consider granting consent.

Report prepared by:


 Lianne Darby
 Planner

3.8.2017
 Date

Report checked by:


 John Sule
 Senior Planner

03/08/2017
 Date

Should the Committee be of a mind to grant consent, I recommend the following conditions for consent:

DRAFT RECOMMENDED CONDITIONS: Subject to change.

SUB-2017-5

1. *The proposal shall be given effect to generally in accordance with the revised plan prepared by Simon Jenkin entitled, 'Plan of Lots 1 & 2 being Proposed Subdivision of Lot 1 DP 304960 – CR 20454 – 25 Ashton Street Mosgiel,' dated April 2017, and the accompanying information submitted as part of SUB-2017-5 received by Council on 1 May 2017, except where modified by the following:*
 2. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.*
 - b) *That right of way A 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 follow the alignment of the existing driveway and shall be at least as wide as the existing fencing to either side of the driveway.*
 - c) *Service easements for the existing services of the house on Lot 2 shall be duly created or reserved over Lot 1 as necessary, and shall be shown on the survey plan in a Memorandum of Easements.*
 3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *That a conservation plan for the management of Johnstone Farmhouse shall be prepared in consultation with Heritage New Zealand, and shall be submitted to the Council for its records.*
 - b) *That a plan shall be prepared showing the building platform for the house site on Lot 1. The building platform shall be dimensioned, and the distances from boundaries clearly indicated. It shall also show the area of screen planting of condition 3(c) below. The plan shall be attached to the consent notice of condition 3(e) below.*
 - c) *That the area of screen planting for the house site of Lot 1 shall be planted out in shrubbery which will grow to a height and density that effectively screens a view of the house from Ashton Street.*
 - d) *That an appropriate floor level for the building platform on Lot 1 shall be determined in accordance with Building Control. It shall be no lower than the existing floor level of Johnstone Farmhouse. This floor level shall be inserted into the consent notice condition of condition 3(e) below.*
 - e) *That a consent notice shall be prepared for registration on the title of Lot 1 for the following on-going conditions:*

'There shall be only one residential unit constructed on this site in order to maintain the density of development in accordance with the resource consent decision of LUC-2017-52.'

'The dwelling for this site and all accessory buildings shall be fully confined to the building platform as shown on the attached plan as this location has been selected in order to minimise effects on the residential neighbours.'

'The area of screen planting as shown on the attached plan shall be maintained in perpetuity in order to provide screening of the house from Ashton Street and the residential neighbours. The planting at maturity shall be of a size and density that effectively screens the dwelling.'

'There shall be no further subdivision of this site so as to create an additional site for the purpose of establishing 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 density of development of this land in accordance with that consented by LUC-2017-52.'

'The minimum floor level of any dwelling constructed on this land shall be not less than ... in order to minimise the risk of flooding.'

Land Use LUC-2017-52

1. *The proposal shall be given effect to generally in accordance with the revised plan prepared by Simon Jenkin entitled, 'Plan of Lots 1 & 2 being Proposed Subdivision of Lot 1 DP 304960 – CR 20454 – 25 Ashton Street Mosgiel,' dated April 2017, and the accompanying information submitted as part of LUC-2017-52 received by Council on 1 May 2017, except where modified by the following*
 1. *That only one residential unit shall be established on each of Lots 1 and 2 SUB-2017-5.*
 2. *That the dwelling and accessory buildings for Lot 1 shall be fully contained within the approved building platform as shown on the consent notice plan attached to the property's title.*
 3. *If a farm accessory building is to be constructed outside of the building platform, all yards shall be maintained in accordance with the rules of the operative District Plan at the time unless further resource consent is obtained for a yard breach.*
 4. *Access to the building platform of Lot 1 shall be formed to a minimum width of 4.0m and a vertical clearance of not less than 4.0m high to ensure that the New Zealand Fire Service appliances have sufficient vehicular access to the property.*
 5. *The new dwelling on Lot 1 shall have an adequate fire fighting water supply available at all times in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk to the property. This can be stored in underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1.0m above ground level) which can be accessed by an opening in the top of the tank so that couplings are not required.*
 6. *A hardstand area shall be formed beside the tanks of condition 5 above so that a fire service appliance can park on it, if so required.*

Advice Notices:

- 1 In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
- 5 This is a resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 6 Any vehicle access from the carriageway to the property boundary will be 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).
- 7 It is advised that the Otago Regional Council should be consulted before works commence to determine if the discharge of stormwater will enter the Owhiro Street and what level of treatment and/or discharge permit, if any, may be required.
- 8 All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 9 This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of any new access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of Section 17 of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
- 10 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.
- 11 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.
- 12 It is advised that in the event of any new development of the new lots, Transport will review the provisions for access and parking at the time of any building consent or resource consent application.

- 13 It is advised that any vehicle access from a road carriageway to the property boundary is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).
- 14 Buildings built before 1900 or sites which were in use before that time are considered archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that Act for a person to modify or destroy an archaeological site without an archaeological authority. Therefore, prior to commencing any earthworks for the formation of accesses, rights of way, building platforms or other activities, the developer is advised to consult with Heritage New Zealand. The purpose of the consultation is to obtain an archaeological authority if relevant, and/or determine the methodology to be used when undertaking the earthworks with a view to avoiding or minimising potential damage to archaeological sites and/or artefacts.