

13 October 2016

City Planning  
Dunedin City Council  
PO Box 5045  
Moray Place  
**DUNEDIN 9058**

COPY

**ATTENTION: The Senior Planner**

Dear Sir/Madam

**SUBDIVISION AND LAND USE APPLICATION  
243 & 243A SADDLE HILL ROAD, SADDLE HILL**

Please find attached on behalf of our client, Mr and Mrs J. & S. Broekhuysen, a plan, subdivision, and land use consent application for consideration by Council under the provisions of the Resource Management Act 1991.

**1.00 Site Information**

**1.10 General Locale**

The property is situated on the south slopes of Saddle Hill between the two mounds, and 2.7 km north of the settlement of Ocean View.

The property subject to this application is slightly irregular in shape and adjoins an unformed legal road. Access is obtained via Right of Way off Saddle Hill Road.

**1.20 Ownership Details**

The land is contained in Computer Freehold Register 69457 in the name of J.N.A. & S.R. Broekhuysen. The legal description is Lot 5 DP 317701 and the total area comprises 34.1189ha. A copy of the title is attached.

**1.30 Topography and Improvements**

As evidenced in the photo attached, the property has a generally southern aspect with an elevation range of approximately 160m with a gently sloping ridge near the north western corner of the site.

Situated on this flatter area is the applicant's dwelling and a farm implement shed, along with a second dwelling occupied by the Applicant's daughter. Curtilage associated with each residential activity surrounds each dwelling.

The remainder of Lot 5 DP 317701 is in pasture and farmed.

#### 1.40 Roading

Saddle Hill Road has an irregular reserve width and a sealed formation approximately 5.5m wide. Saddle Hill Road has a Collector status in the District Plan Roding Hierarchy.

The legal road adjoining the site has a reserve width at least 10.06m and is unformed.

#### 1.50 Land Use

The site was created in 2003 as part of an 11-lot subdivision under RMA2002-365488 and variation RMA-2003-366636. Land use consent was granted in 2003 for erection of the implement shed. The single storey dwelling was constructed onsite in approximately 2007 by the previous owners within the Landscape Building Platform.

Mr and Mrs Broekhuysen purchased the property in 2011 and run cattle on the farm.

In 2014, the applicant's obtained consent (LUC-2014-413) to establish a second dwelling also within the Landscape Building Platform which was constructed in 2015. The two storey dwelling is located northwest of the original dwelling, and shares the access. It is occupied by the applicant's daughter and her sons.

### 2.00 Consent Proposal

Mr and Mrs Broekhuysen wish to separate the two dwellings onto individual titles. They have no intention of selling either property and both families will continue to reside in their respective dwellings. However, the issue of separate titles will provide the mechanism for individual and personal registerable interests (eg easements, covenants, mortgages as appropriate), allow for separate rating and insurance assessments and will facilitate each dwelling being separately managed as part of the general estate planning.

Terramark plan M1948/1a details the proposed subdivision required to facilitate Mr and Mrs Broekhuysen's intentions.

Specifically, Lot 1 comprises an area of 33.29ha and contains Mr and Mrs Broekhuysen's dwelling, implement shed and the farmland. Access will be retained via the existing Right of Way over Lot 4 DP 317701 and over the existing access within the site.

Lot 2, 8250m<sup>2</sup>, comprises the northwest corner of the site, and contains the second dwelling occupied by their daughter, its curtilage and a single paddock. Access will be obtained via the existing right of way over Lot 4 DP 317701 and via a new right of way over proposed Lot 1 shown as 'A'.

The boundary for Lot 1 will generally follow existing fence lines. The existing fenceline, and (proposed boundary) varies in width between 2m and 4m off the existing implement sheds on Lot 1. The proposed Right of Way shown as 'A' will have a corridor width of 8.0m and a metal formation width of at least 3.5m.

Each dwelling is individually served for all critical services including power and electricity from the networks off Saddle Hill Road, water via collected rainwater stored onsite and sewage to disposal fields individually contained within the respective lots. No change to the status quo is proposed as part of the subdivision.

### **3.00 Zoning and Activity Status**

#### **3.10 Current Dunedin City District Plan**

The site is located within the Rural zone of the Dunedin City District Plan, Map 56.

The site is identified as being within the Saddle Hill Landscape Conservation Area. Majority of the site is located within the Visually Prominent Area, and a small portion of Lot 1 is identified as being within the Visually Recessive Area.

##### **3.11 *Subdivision***

The subdivision fails to comply with Rule 18.5.1(i) requiring that each resulting lot must be 15ha or greater.

Therefore the subdivision application is considered to be a **non-complying activity**.

##### **3.12 *Land Use***

Rule 6.5.2(iii) states that residential activity is permitted provided the minimum area of the site is not less than 15ha. Lot 2 fails to comply with this rule.

The dwelling on Lot 2 will fail to comply with Rule 6.5.(i)(b)(i) requiring a minimum separation of 40m between a residential dwelling and the proposed boundary between Lot 1 and 2.

The shed on Lot 1 will fail to comply with Rule 6.5.(i)(b)(ii) requiring a minimum separation of 6m between a building not housing animals and the proposed boundary between Lot 1 and 2.

Therefore the land use application is considered to be a **non-complying activity**.

#### **3.20 Proposed Second Generation Dunedin City District Plan**

The site is located within the Rural-Coastal zone of the Notified Proposed Second Generation Dunedin City District Plan.

The majority of the Proposed Second Generation District Plan has no legal effect as it continues through the public hearings process. In relation to this application, the objectives and policies and the subdivision performance standards for minimum site size in accordance with Rule 16.7.4 already have legal effect.

The subdivision fails to comply with Rule 16.7.4.1.a requiring that each resulting lot in the Rural Coastal Zone must be 40ha or greater. Therefore in accordance with Rule 16.7.4.3, the subdivision application is considered to be a **non-complying activity**.

**Overall the proposal is considered a non-complying activity.**

#### **4.00 Resource Management Act – Part 2 Assessment**

Clause 2 of Schedule 4 of the Resource Management Act (RMA) requires that an activity is assessed against the matters set out in Part 2 of the RMA.

Part 2 of the RMA sets out the purpose and principles of the Resource Management Act and specifically addresses matters of National Importance, Other Matters and the Treaty of Waitangi.

This proposal recognises and provides for the matters of National Importance as specified in Section 6, the Other Matters as specified in Section 7 and the Treaty of Waitangi in Section 8 on the premise that it is consistent with these matters by virtue of their lack of relevance to the site.

## 5.00 **Regional Policy Statement for Otago**

Section 104(1)(b)(iii) of the Act requires Council to have regard to the relevant provisions of the Regional Policy Statement for Otago. The following are considered to be relevant:

### 5.10 **Land**

| <b>Objective/Policy</b>                                                                                                                                                                                                                                                                                                                    | <b>Comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Objective 5.4.1 and Policies 5.5.2, 5.5.3 &amp; 5.5.4</b><br>To promote the sustainable management of Otago's land resources in order to maintain and enhance the primary productive capacity and life-supporting capacity of land resources; and to meet the present and reasonably foreseeable needs of Otago's people and community. | This proposal is consistent with these objectives and policies, as the subject site does not contain high class soils, and no new site development (residential or otherwise) is being undertaken. The existing character of the area is retained.<br><br>The subdivision is merely altering the land tenure associated with a lawfully established land use activity and in doing so promotes diversification of land use whilst sustainably managing the pastoral land for future generations. |
| <b>Objective 5.4.2 &amp; Policies 5.5.2 - 5.5.4</b><br>To avoid, remedy or mitigate degradation of Otago's natural and physical resources resulting from activities utilising the land resource.                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Objective 5.4.3 &amp; Policy 5.5.6</b><br>To protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development.                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

### 5.20 **Built Environment**

| <b>Objective/Policy</b>                                                                                                                                                            | <b>Comment</b>                                                                                                                                                                                               |
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| <b>Objective 9.4.2 and Policies 9.5.4 &amp; 9.5.5</b><br>To avoid, remedy, or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources. | The proposal is consistent with objective and policies by virtue that there no new built structures intended as a consequence of this proposal and an existing Landscape Management Plan exists for the Lot. |

## 6.00 Dunedin City District Plan Objectives and Policies

Council's Current Dunedin City District Plan contains many Objectives and Policies that are relevant when considering this proposal. These are discussed as follows:

### 6.10 Sustainability Section

| Objective/Policy                                                                                                                                                                                                                                                                                                    | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <b>Objective 4.2.1</b><br>Enhance the amenity values of Dunedin.<br><b>Policy 4.3.1</b><br>Maintain and enhance amenity values.                                                                                                                                                                                     | <p>The surrounding environment is Rural in nature, characterised by parcels in excess of 10 ha.</p> <p>The residential density on the subject property is currently one per 17ha, in accordance with the current District Plan and the relevant provisions at the time of establishment.</p> <p>Significant though, is that as a consequence of consent to this proposal, there will be no visual or land use changes that have any potential to adversely affect amenity values.</p> <p>The proposal is therefore not inconsistent.</p> |
| <b>Objective 4.2.2</b><br>Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area.<br><b>Policy 4.3.2</b><br>Avoid developments which will result in the unsustainable expansion of infrastructure services. | <p>Road access, electricity, and telephone services are all in place to the site and dwellings. Water supply and effluent disposal are by on-site methodology. Each dwelling is individually serviced.</p> <p>Accordingly, the proposed subdivision will not result in the need to extend any Council owned or private infrastructure.</p>                                                                                                                                                                                               |
| <b>Objective 4.2.4</b><br>Ensure that significant natural and physical resources are appropriately protected.<br><b>Policy 4.3.4</b><br>Provide for the protection of the natural and physical resources of the City commensurate with their local, regional, and national significance.                            | <p>The subject parcel does not contain any High Class Soils as mapped on District Plan Map 75. The proposal to subdivide out the existing second dwelling will not alter the productive agricultural potential of Lot 1. In fact by retaining all of the pastoral land with Lot 1, the existing productive capacity of the site is fully retained.</p>                                                                                                                                                                                   |
| <b>Policy 4.3.7</b><br>Use zoning to provide for usage and developments which are compatible with identified areas.<br><b>Policy 4.3.8</b><br>Avoid the indiscriminate mixing of incompatible uses and developments.                                                                                                | <p>The residential land use activities have been lawfully established onsite. The proposed subdivision reflects the existing land uses and will not result in any additional land use or developments. Therefore the proposal is considered to be consistent with the policies.</p>                                                                                                                                                                                                                                                      |

## 6.20 Rural Section

| Objective/Policy                                                                                                                                                                                                                                                                       | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <b>Objective 6.2.1</b><br>Maintain the ability of the land resource to meet the needs of future generations.                                                                                                                                                                           | The location of the second dwelling and its associated curtilage (proposed Lot 2) determines that it offers limited benefit to the productive potential of the site.<br><br>The pastoral land is currently farmed in conjunction with the dwelling and sheds on Lot 1, and it is advantageous to ensure all of this land remains in a single holding for maximum productivity and to meet the needs of future generations.<br><br>While the proposal does not maintain and enhance any such potential, it is not inconsistent with these Objectives and Policies.                                                            |
| <b>Policy 6.3.1</b><br>Provide for activities based on the productive use of the rural land.                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Objective 6.2.2</b><br>Maintain and enhance the amenity values associated with the character of the rural area.                                                                                                                                                                     | While the subdivision will result in a density on the Lot 2 that is well below that specified in the District Plan, this reflects only the existing lawfully established dwellings and associated land uses onsite.<br><br>There will be no new or additional dwellings as a result of consent to this proposal.<br><br>As a consequence, the subject proposal, while not promoting a true productive use of land for Lot 2, neither does it reduce the potential associated with Lot 1.<br><br>Overall, the existing nature of the land uses ensures that the rural character of the environment is not adversely affected. |
| <b>Policy 6.3.3</b><br>To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural zone.                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Policy 6.3.5</b><br>Require rural subdivision and activities to be of a nature, scale, intensity, and location consistent with maintaining the character of the rural area and to be undertaken in a manner that avoids, remedies, or mitigates adverse effects on rural character. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Objective 6.2.5</b><br>Avoid or minimise conflict between different land use activities in rural areas.                                                                                                                                                                             | All of the land use activities associated with this property have been historically and lawfully established.<br><br>No new land uses or development is proposed and therefore the proposal is consistent with this Objective.                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Policy 6.3.8</b><br>Ensure development in the Rural and Rural-Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Policy 6.3.9</b><br>Ensure residential activity in the rural area occurs at a scale enabling itself-sufficiency in                                                                                                                                                                  | All roading, water supply, and effluent disposal provision is in place, and no changes are necessary. There is no requirement for any extension of public infrastructure.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| water supply and on-site effluent disposal.                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                              |
| <b>Objective 6.2.6</b><br>Maintain and enhance the life-supporting capacity of land and water resources.                                                                        | The subject parcel does not contain any High Class Soils as mapped on District Plan Map 75. Therefore, any food producing potential inherent in the soils is not compromised by this proposal. Furthermore, the intention to include all of the pastoral land in Lot 1 will continue to protect the current productive capacity of the land. |
| <b>Policy 6.3.10</b><br>Protect areas that contain "high class soils", as shown on District Plan Map 75, 76, & 77, in a way which sustains the productive capacity of the land. |                                                                                                                                                                                                                                                                                                                                              |

### 6.30 Landscape

| Objective/Policy                                                                                                                                                                                                    | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>Objective 14.2.1</b><br>Ensure the City's outstanding natural features and landscapes are protected.                                                                                                             | The existing land uses will remain unchanged and no new development is intended. The site is located within the Saddle Hill Landscape Conservation Area though as a result of the above, the proposal will have no adverse effects on the natural features and landscapes. A Landscape Management Plan for the Lots exists and will continue to exist in relation to Lot 1.<br><br>The proposal is consistent with these objectives and policies. |
| <b>Policy 14.3.1</b><br>Identify Dunedin's outstanding landscapes, and identify and protect their important characteristics                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Objective 14.2.3 &amp; 14.2.4</b><br>Ensure that land use and development do not adversely affect the quality of the landscape. Encourage the maintenance and enhancement of the quality of Dunedin's landscape. |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Policy 14.3.4</b><br>Encourage development which integrates with the character of the landscape and enhances landscape quality.                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

### 6.40 Subdivision

| Objective/Policy                                                                                                                                                                                                     | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <b>Objective 18.2.3</b><br>Ensure that the potential uses of land and water are recognised at the time of subdivision activity.                                                                                      | The subdivision recognises existing land uses and existing occupied boundaries.<br><br>The proposed subdivision reflects existing land use areas. Overall, residential density is unchanged, foul and stormwater disposal systems are established and contained within the proposed lots and as a result, potential effects from the proposal are less than minor.<br><br>By promoting the separation of Lot 2 from the larger holding, only to the extent it is currently occupied, will ensure that any potential adverse effects on the balance pastoral land and surrounding environment are no more than minor. |
| <b>Policy 18.3.4</b><br>Subdivision activity consents should be considered together with appropriate land use consents and be heard jointly.                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Objective 18.2.6</b><br>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. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Policy 18.3.8</b><br>Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

6.50 Transportation

| Objective/Policy                                                                                                                                                          | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <b>Objective 20.2.2</b><br>Ensure that land use activities are undertaken in a manner which avoids, remedies, or mitigates adverse effects on the transportation network. | Saddle Hill Road is a Local Road in the District Plan Roding Hierarchy. It comprises a sealed carriageway of sufficient width to accommodate the existing residential activities. The right of way providing physical access to the site is of sufficient width and construction to continue serving both dwellings.<br><br>The new right of way A proposed within the site will be over the existing formation which given its nearly 4.0m formation width is considered a suitable standard for two dwellings.<br><br>Given the land use, number of dwellings, vehicle access arrangements, and vehicle movements are not proposed to change at all following consent, any effects are considered to be no more than minor and effectively avoided. |
| <b>Objective 20.2.4</b><br>Maintain and enhance a safe, efficient, and effective transportation network.                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Policy 20.3.4</b><br>Ensure traffic generating activities do not adversely affect the safe, efficient, and effective operation of the roading network.                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Policy 20.3.5</b><br>Ensure safe standards for vehicle access.                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

Overall it is considered that the proposal is consistent with the relevant provisions and policies of the Dunedin City District Plan.

## 7.00 Proposed Second Generation Dunedin District Plan Objectives and Policies

Council's proposed Second Generation District Plan contains Objectives and Policies that already have legal effect and are relevant when considering this proposal. These are discussed as follows:

### 7.10 Rural Section

| Objective/Policy                                                                                                                                                                                                                                                                                                                                                                                                                             | Comment                                                                                                                                                  |
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| <b>Objective 16.2.1</b><br>Rural zones are reserved for productive rural activities                                                                                                                                                                                                                                                                                                                                                          | All of the land use activities associated with this property have been historically and lawfully established.                                            |
| <b>Policy 16.2.1.7</b><br>Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.                                                                                                                                                                                                                                   |                                                                                                                                                          |
| <b>Objective 16.2.4</b><br>The productivity of rural activities in the rural zones is maintained or enhanced                                                                                                                                                                                                                                                                                                                                 | Lot 2 will contain the absolute minimum residential curtilage, therefore retaining the maximum area of productive land as a single holding within Lot 1. |
| <b>Policy 16.2.4.3</b><br>Only allow subdivision where the subdivision is designed to ensure any future land use and development will:<br>a: maintain and enhance the productivity of rural activities<br>b: maintain high class soils for farming activity<br>c: maintain land in a rural rather than rural residential land use<br>d: do not increase the potential for reverse sensitivity from residential activities in the rural zone. |                                                                                                                                                          |
| <b>Objective 16.2.3</b><br>The rural character values and amenity of the rural zones are maintained or enhanced.                                                                                                                                                                                                                                                                                                                             | While the proposal is not fully consistent, it is also not considered inconsistent with these Objectives and Policies.                                   |
| <b>Policy 16.2.3.8</b><br>Only allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones                                                                                                                                                                                                    |                                                                                                                                                          |

7.20 Natural Environment

| Objective/Policy                                                                                                                                                                                                                       | Comment                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>Objective 10.2.5</b><br>Outstanding Natural Features (ONF), Outstanding Natural Landscapes (ONL) and Significant Natural Landscapes (SNL) are protected from inappropriate development and their values are maintained or enhanced. | The existing land uses will remain unchanged and no new development is intended. The site is located within the Saddle Hill Significant Natural Landscape and Saddle Hill Outstanding Natural Feature overlays though as a result of the above, the proposal will have no adverse effects on the natural features and landscapes.<br><br>The proposal is consistent with these objectives and policies. |
| <b>Policy 10.2.5.11</b><br>Only allow subdivision activities in the ONF, ONL and SNL overlay zones where the subdivision is designed to ensure that any future land use or development will maintain the landscape values.             |                                                                                                                                                                                                                                                                                                                                                                                                         |

7.30 Transportation

| Objective/Policy                                                                                                                                                                                                                 | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <b>Objective 6.2.3</b><br>Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods                                                                    | Saddle Hill Road comprises a sealed carriageway of sufficient width to accommodate the existing residential activities.<br><br>The existing right of way providing physical access to the site is of sufficient width and construction to continue serving both dwellings.<br><br>New right of way A proposed within Lot 1 will be over the existing driveway which given its nearly 4.0m formation width is considered a suitable standard to serve two dwellings.<br><br>Given that the land use, number of dwellings, vehicle access arrangements, and vehicle movements are not proposed to change at all following consent, any effects are considered to be no more than minor and effectively avoided. |
| <b>Policy 6.2.3.9</b><br>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       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Policy 6.2.3.13</b><br>Require subdivision 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. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Objective 6.2.4</b><br>... Vehicle accesses are designed and located to: b) facilitate the safe and efficient functioning of the transport network.                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

Overall it is considered that the proposal is consistent with the relevant Objectives and Policies of the Proposed Second Generation District Plan.

## 8.00 Assessment of Effects on the Environment

Schedule 4 of the Resource Management Act 1991 requires that every application for resource consent is to include an assessment of environmental effects and that the information must be in sufficient detail to satisfy the purpose of the assessment.

### 8.10 Consultation

Pre-application meetings and correspondence were undertaken with Phil Marshall (15/3/2016 and 26/05/2016) and John Sule (27/07/2016) to address potential effects, aspects of precedent, and processing requirements. These consultations identified that the consent application would potentially be notified given the respective lot sizes proposed, but that this would remain subject to the arguments of true exception/precedent within the application. Tied closely in with this and also raised was the impact the future development potential of Lot 1 would have on the application status.

The following adjoining owners/occupiers have provided their consent and their affected persons forms are attached. No other parties or statutory bodies are considered to be affected by the proposal.

| Name                    | Property Address                       | Consent of Owner | Consent of Occupier |
|-------------------------|----------------------------------------|------------------|---------------------|
| Heather and John McLean | 245 Saddle Hill Road, Saddle Hill      | Yes              | Yes                 |
| Douglas Allen           | 50 Finnie Road, Saddle Hill            | -                | Yes                 |
| Stephen Finnie          | 50 Finnie Road, Saddle Hill            | Yes              |                     |
| Nicole Broekhuysen      | 243A Saddle Hill Road (Proposed Lot 2) | (Applicant)      | Yes                 |

### 8.11 *275 Saddle Hill Road*

The property at 275 Saddle Hill Road is not considered to be affected as the property only abuts the subject parcel at a point. Furthermore, the land use activity undertaken on 275 Saddle Hill Road consists of quarrying and occurs on the opposite side of the landform.

Given the existing nature of the land uses onsite, the fact that all environmental effects are established and the lack of intervisibility between the two activities, we contend that the subdivision proposal to delineate title boundaries will have no effect on this property.

### 8.20 Effects on the Environment

The following assessment of effects addresses those assessment matters listed in Sections 6.7 & 18.6.1 that are considered relevant to this proposal. The local environment is characterised by dwellings on larger complying blocks of rural land. The effects assessment has been undertaken in the context of this environment.

### 8.21 *Lot Size, Dimension and Physical Limitations*

There are two dwellings on this lot, both lawfully established. Amenity and associated character are established and nothing on the site changes as a consequence of consent to this proposal.

The proposed subdivision will create two lots. Lot 1 will contain the pastoral land, single storey dwelling and implement shed whilst Lot 2 will comprise the two storey residential activity and curtilage.

Any visual impact reflects only the existing environment rather than fragmentation as the proposal amounts to a change in title structure to reflect land use structure only.

It is considered advantageous to utilise an averaging approach in this instance to ensure that the potential adverse effects associated with a subdivision are avoided as much as possible thereby ensuring that the pastoral land associated with this property is not unnecessarily fragmented by title boundaries in order to satisfy planning regulation.

Combined with a restricted development/subdivision covenant on Lot 1 (Refer Section 9.20) this subdivision proposal, provides the greatest benefit to all existing and future land uses onsite, and overall is considered far more beneficial than promoting an inappropriate 17ha/17ha split purely to satisfy the 1995 District Plan density and subdivision provisions.

#### 8.22 *Bulk and Location*

The proposed boundary between Lot 1 and 2 will create two non-compliances with respect to setback distances to the shed on Lot 1 and the dwelling on Lot 2. The proposed boundary will generally follow existing fence lines and the breaches will remain internal to the subdivision.

Overall, the proposed boundaries are not considered to create any adverse effects on the surrounding environment.

#### 8.23 *Transportation*

Transportation and roading matters have been discussed in the Objectives and Policies section above. As there will not be any site development or land use changes, there will similarly be no change in the transportation pattern associated with this property. Overall there will be minimal if any adverse effects on the transportation network.

Legally, a right of way (shown as A) will be extended over a portion of the access within the subject site to extend legal access to new Lot 2. This right of way will be compliant with the access performance standards for the rural zone, being a minimum formed width of 3.5m and a minimum legal width of 4.0m.

Easements for the provision of access exist over adjoining properties and these will carry down onto the new titles.

#### 8.24 *Services*

With the exception of electricity and telephone, servicing in this area is on-site self-serviced: i.e. water supply is by roof collection and tank storage, effluent disposal is by onsite sewage systems and effluent field disposal, and surplus stormwater is disposed of on-site.

There are no new services installations or service extensions necessary, and servicing effects on the environment will therefore be less than minor.

Services easements will be reserved at the time of subdivision as required.

#### 8.25 *Hazards*

The DCC 2GP Hazards Plan records a Moderate instability hazard (Hazard 2) over the majority of Lot 1. Both dwellings are lawfully established within the identified Landscape Building Platform under the appropriate consent process, and the subdivision will only give effect to a title reconfiguration. No structures or property are placed in any greater risk from natural hazards as a consequence of subdivision consent being granted.

Subdivision activates the requirement to assess the application in respect of the provisions of the NES (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health). As such, HAIL search applications have been lodged with the DCC and ORC and upon receipt of these, appropriate comment will be provided.

#### 8.26 *Cumulative Effects*

The nature of cumulative effects is defined as the gradual build-up of consequences as a result of the activity that is under consideration and often is associated with a consent setting a precedent upon which other applications can rely. The potential for this consent to set a precedent is discussed further in Section 9.00 – Resource Management Tests.

This application seeks consent for a subdivision activity that will result in a new title but there will be no obvious visual effects of that and no apparent physical or land use changes. The cumulative effects are therefore submitted to be imperceptible and insignificant.

#### 8.30 Mitigation Measures

Council can achieve any mitigation that might be deemed necessary through resource consent conditions and subsequent monitoring procedures.

#### 8.40 Monitoring

Council will be able to monitor the consent and compliance via its established monitoring procedures.

## **9.00 Resource Management Act Tests**

### **9.10 Section 104D**

Section 95A(ii)(a) states that Council must publicly notify an application if it decides the activity will have, or is likely to have, adverse effects on the environment that will be more than minor. This application is clearly non-complying, however, any need for notification has yet to be determined.

The Assessment of Effects has determined that the effects are likely to be no more than minor. Despite any decision Council makes under Section 95A, a consent authority may grant a resource consent for a non-complying activity, only if it is satisfied that either the adverse effects will be minor, or the activity will not be contrary to the objectives and policies of the District Plan. This is referred to as the Section 104 test.

It has been submitted that the first limb of this test is passed. While "minor" is not defined, case histories have established that it suggests effects that are less than major, and can include those effects that are more than simply minute or slight. Whether effects are minor is to be determined after having regard to any mitigation of effects that might be achieved by imposing conditions.

The assessment of the application against the Objectives and Policies, while not finding a total measure of consistency, did not determine the application to be repugnant.

### **9.10 Section 104(1)(b)(vi) – True Exception**

Pursuant to Section 104(1)(b)(vi) a consideration of true exception is also relevant. Case law has required that for consent to be granted to a non-complying activity, the application needs to be a "true exception". This is to ensure that granting of a non-complying activity does not set an undesirable precedent that could lead to a proliferation of similar activities, undermining the integrity and consistent administration of the District Plan.

The presence of two dwellings on a single rural site will not be uncommon to the Rural zone.

This site however is exceptional in that both dwellings have been established within the same Landscape Building Platform, thus in close proximity to one another, provide for extended family, whilst continuing to meet the current density performance standards of the Rural Zone. That there are few other sites demonstrating similar history and circumstances, presents this proposal as an opportunity to be assessed as unique in that environment.

Consent to establish a second dwelling is considered a controlled activity on the premise that the density rules are met. This rule remains operative at the current time and could be applied to Lot 1 after subdivision given that its resultant size would remain larger than 30ha. This could be followed by a subdivision as either two 15ha parcels or via a similar application as that proposed.

The applicants have no intention of undertaking such an application, and to allay Council's concerns that this proposal is speculative, they offer to Council the ability to impose a condition of consent being the imposition of a consent notice which restricts Lot 1 from further residential development and subdivision in future.

The following restrictive consent conditions (in principle) have previously been imposed by the DCC and accordingly we promote the inclusion of a consent notice on Lot 1 which states:

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

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

In doing so, this consent notice being registered on the title, provides the potential to allay any concern that the granting of a favourable decision would set an undesirable precedent, and ensures that it remains a true exception in the current environment. Council should then have confidence, on the strength of the above, to process this application without the need for notification.

## **10.00 Conclusion**

This application proposes to subdivide a 33 ha title into two parcels, based on an averaged approach and to secure land use consent to authorise the continuation of the existing dwelling on an undersized lot.

While the application status is non-complying, our assessment has determined that it is not repugnant in terms of the District Plan, 2<sup>nd</sup> Generation District Plan and Regional Plan Objectives and Policies and that the adverse effects on the environment are less than minor. Furthermore, the risk of a precedent being set is remote given the unique circumstances of the site, the applicant's reasoning and in conjunction with the proposed covenant restricting further development/subdivision.

In conclusion, these are summarised as follows:

- **The subdivision amounts to a title change to reflect the existing land uses.**
- **There will be no new development or dwellings as a consequence of the proposal and change to existing occupancies.**
- **There will be no obvious visual changes as a consequence of consent being granted.**
- **Consent will facilitate a reorganisation of the assets within the family trust and allow the Broekhuysen families to provide for their individual circumstances including long term estate planning.**
- **There are no potentially affected parties.**
- **Council is able to impose mitigating conditions as considered appropriate and in particular the "no development/subdivision consent notice".**
- **This proposal represents a unique set of circumstances that minimises the risk of any precedent being set.**

In these circumstances, we are of the view that any effects will be able to be confined to the site, and once carrying out the required statutory tests, Council should be able to reach a favourable decision.

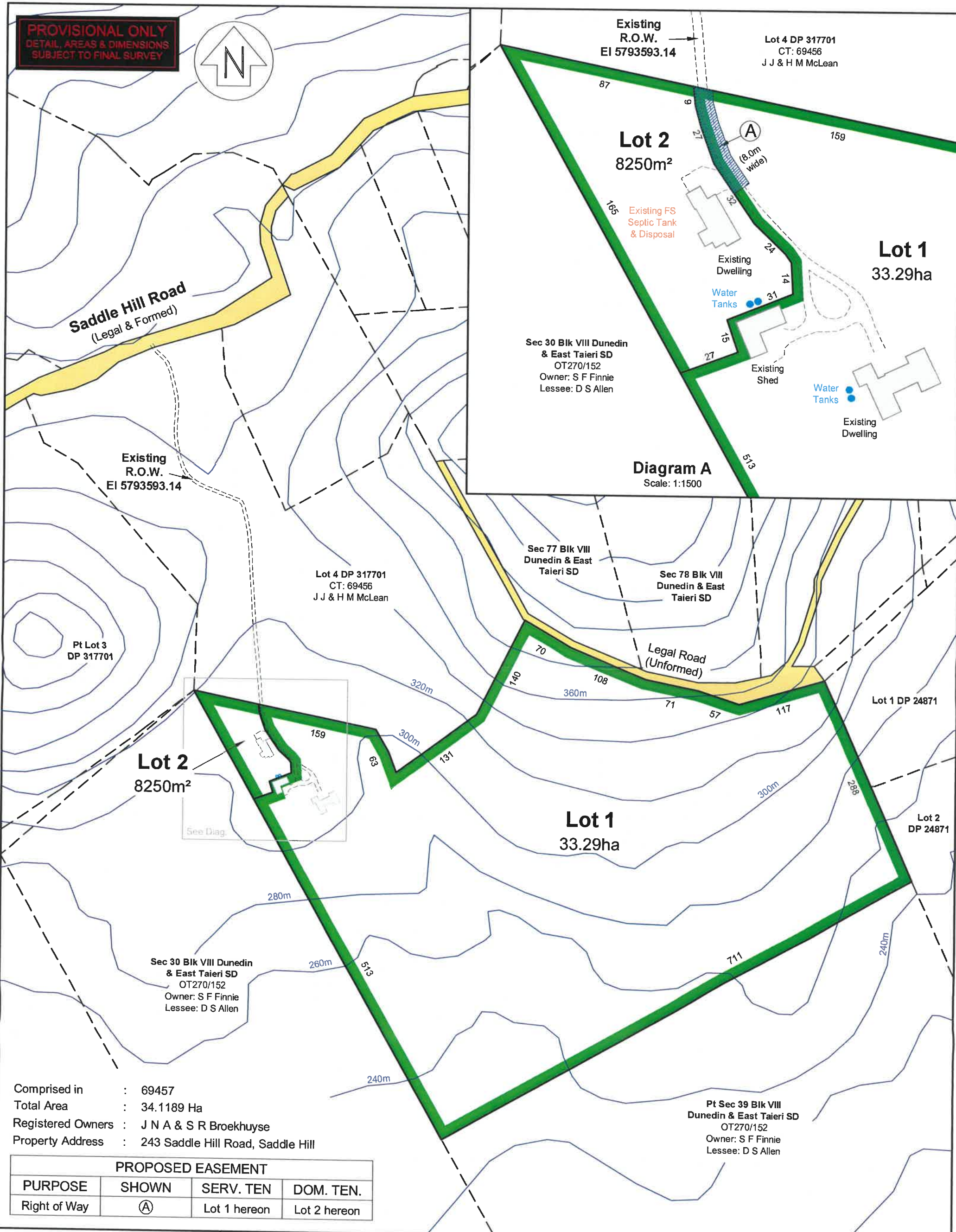
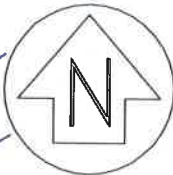
Yours faithfully  
**Terramark Ltd**



Maaïke Duncan  
**Licensed Cadastral Surveyor**  
e-mail: [maaike@terramark.co.nz](mailto:maaike@terramark.co.nz)

Encl: Resource Application Form  
Copies of Plan M1948-1a  
Copy of CFR 69457  
Copies of Affected Persons Forms x4

PROVISIONAL ONLY  
DETAIL, AREAS & DIMENSIONS  
SUBJECT TO FINAL SURVEY



Comprised in : 69457  
Total Area : 34.1189 Ha  
Registered Owners : J N A & S R Broekhuysen  
Property Address : 243 Saddle Hill Road, Saddle Hill