



2781-82

P.W. 51/79.

No.

please quote these numbers.

PUBLIC WORKS DEPARTMENT, WELLINGTON, N.Z.

30th April, 1915.

District Roads - Taieri County.

Memorandum for

The District Land Registrar,
Dunedin.

I duly received your memo of 22nd ultimo hereon and have to thank you for the same.

An Order in Council exempting the portions of road omitted from the Order in Council gazetted on 11th March last has been signed and gazetted, and I now enclose a copy of same together with a copy of the Order in Council previously issued and the plan which was returned by you.

I shall be glad if you will kindly register the Orders in Council and advise me when such has been done.

Asst. Under Secretary.

Encls: Copies of 2 Orders in
Council.

Copy of P.W.D. 36953.

[Extract from *New Zealand Gazette*, 22nd April, 1915.]

Portions of District Roads in the Taieri County exempted from the Provisions of Section 117 of the Public Works Act, 1908.

LIVERPOOL, Governor.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this twelfth day of April, 1915.

Present:

THE RIGHT HONOURABLE W. F. MASSEY, P.C., PRESIDING IN COUNCIL.

WHEREAS by subsection one of section one hundred and seventeen of the Public Works Act, 1908, it is, *inter alia*, provided that the said section shall not apply in any case where the local authority having control of any road or street by resolution declares that the provisions thereof shall not apply to any specified road or street, or any specified part thereof, and such resolution is approved by the Governor in Council:

And whereas by subsection two of section one hundred and seventeen of the Public Works Act, 1908, it is provided that such approval may be either absolute or subject to such conditions with respect to the building-line as the Governor, by Order in Council, thinks fit to impose:

And whereas the Taieri County Council, being the local authority having control of the roads described in the Schedule hereto, did, by resolution, declare that the provisions of the said section one hundred and seventeen should not apply to the said portions of roads:

And whereas it is deemed expedient that such resolution should be approved:

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, in pursuance and exercise of the powers conferred by the above-in-part-recited Act, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby approve of the said resolution in so far as it affects the said portions of roads described in the Schedule hereto.

SCHEDULE.

ALL that portion of district road in the Otago Land District, Taieri County, commencing at a point 1425 links from the south-eastern corner of Section 1, Block V, Taieri Survey District, and proceeding thence in a north-westerly direction along the north-eastern frontage of part of the said Section 1 to a point 1515 links from the south-eastern corner of the said Section 1.

Also all that portion of district road, in the said land district and county, commencing at a point 1475 links from the south-eastern corner of the said Section 1, and proceeding thence in a south-westerly direction along the south-eastern frontage of part of the said Section 1 to a point 1500 links from the south-eastern corner of the said Section 1.

As the said portions of roads are more particularly delineated on the plan marked P.W.D. 33953, and deposited in the office of the Minister of Public Works at Wellington, in the Wellington Provincial District, and thereon coloured yellow.

J. F. ANDREWS,
Clerk of the Executive Council.



No 2781
Received for deposit and particulars
entered in Deeds Register Book
G 426 at 10.00 on the 4th May 1915

Corbace
Dist Land Regd

[Extract from *New Zealand Gazette*, 11th March, 1915.]

Portions of District Roads in the Taieri County exempted from the Provisions of Section 117 of the Public Works Act, 1908.

LIVERPOOL, Governor.

ORDER IN COUNCIL.

At the Government Buildings at Wellington, this first day of March, 1915.

Present:

THE RIGHT HONOURABLE W. F. MASSEY, P.C., PRESIDING IN COUNCIL.

WHEREAS by subsection one of section one hundred and seventeen of the Public Works Act, 1908, it is, *inter alia*, provided that the said section shall not apply in any case where the local authority having control of any road or street by resolution declares that the provisions thereof shall not apply to any specified road or street, or any specified part thereof, and such resolution is approved by the Governor in Council:

And whereas by subsection two of section one hundred and seventeen of the Public Works Act, 1908, it is provided that such approval may be either absolute or subject to such conditions with respect to the building-line as the Governor, by Order in Council, thinks fit to impose:

And whereas the Taieri County Council, being the local authority having control of the portions of roads described in the Schedule hereto, did by resolution declare that the provisions of the said section one hundred and seventeen should not apply to the said portions of roads:

And whereas it is deemed expedient that such resolution should be approved:

Now, therefore, His Excellency the Governor of the Dominion of New Zealand, in pursuance and exercise of the powers conferred by the above-in-part-recited Act, and acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby approve of the said resolution in so far as it affects the said portions of roads described in the Schedule hereto.

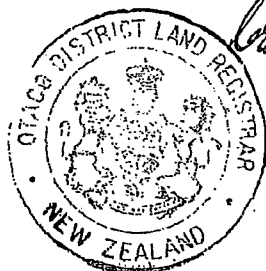
SCHEDULE.

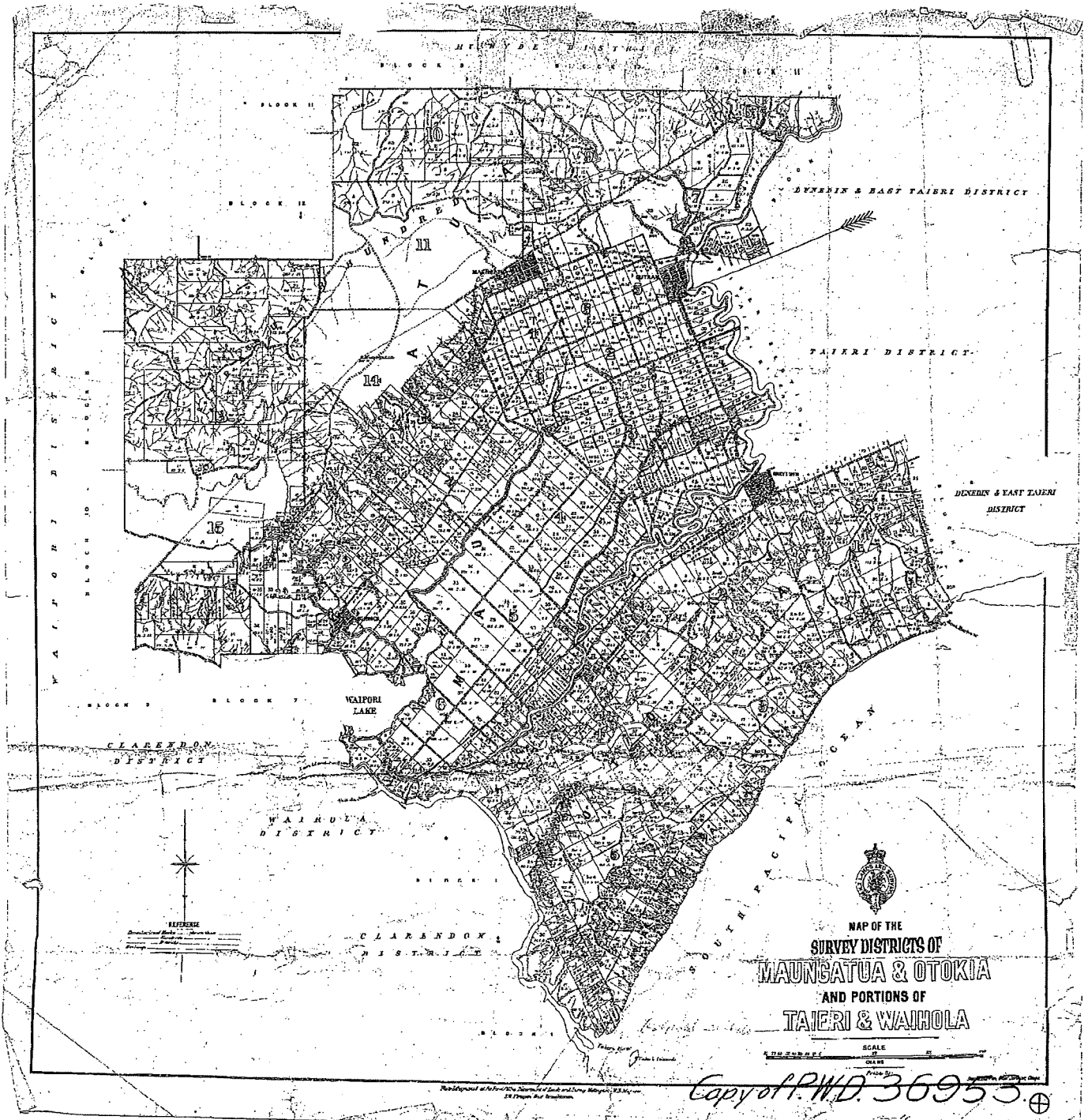
ALL that portion of district road in Otago Land District, Taieri County, commencing at the south-eastern corner of Section 1, Block V, Taieri Survey District, and proceeding thence in a north-westerly direction for a distance of 14.25 chains, more or less, adjoining part of the said Section 1.

Also all that portion of district road in the said land district and county, commencing at the south-eastern corner of the said Section 1, and proceeding thence in a south-westerly direction for a distance of 14.75 chains, more or less, adjoining the said Section 1, and terminating at the south-eastern corner of Section 2, Block V aforesaid.

As the said portions of roads are more particularly delineated on the plan marked P.W.D. 38983, and deposited in the office of the Minister of Public Works at Wellington, in the Wellington Provincial District, and thereon coloured yellow.

J. F. ANDREWS,
Clerk of the Executive Council.





INC 478

2781

This is a copy of the Plan, marked P.W.D. 36953
 referred to in a ~~Proclamation~~ Order in Council dated the 1st
 day of March 1915, and published in the
 New Zealand Gazette, No. 36, page 833
 of 11th March 1915

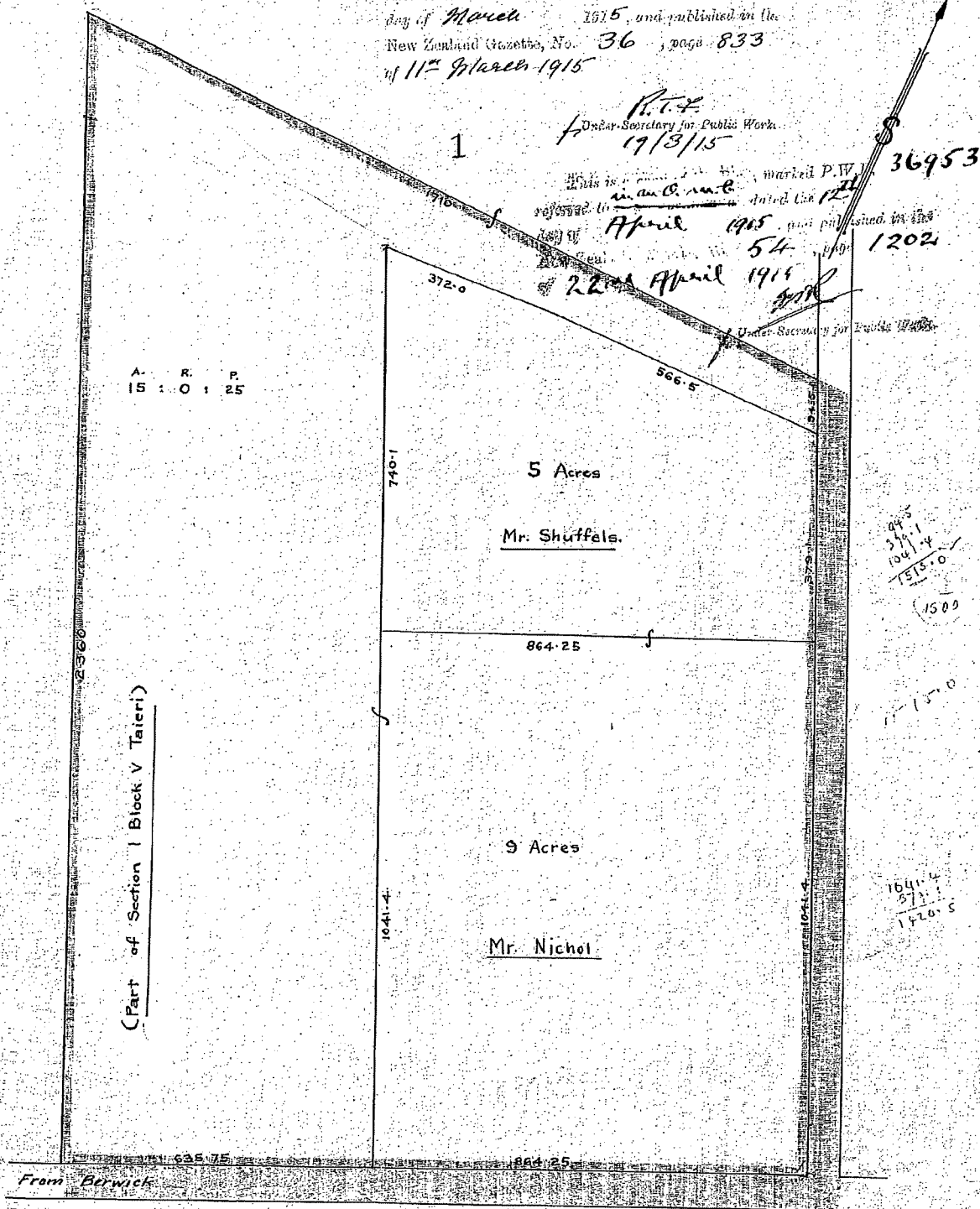
R.T.F.
 Under-Secretary for Public Works.
 19/3/15

This is a copy of the Plan, marked P.W.D. 36953
 referred to in a ~~Proclamation~~ Order in Council dated the 12th
 day of April 1915, and published in the
 New Zealand Gazette, No. 54, page 1202
 of 22nd April 1915

R.T.F.
 Under-Secretary for Public Works.

A. R. P.
 15 : 0 : 25

(Part of Section 1 Block V Taiari)



Plan of proposed Sub-division of
 James McBryde's Property at Outram

Scale: 2 chs = 1 inch.

As the same is shown on the map of the survey Districts of Maungatua and Otakia and portions of
 Taiari and Waiholo hereunto annexed and therein edged red.

R.T.F.
 11/3/15

Copy of P.W.D. 36953

19/3/15

Lianne Darby

From: Warren Hanley <warren.hanley@orc.govt.nz>
Sent: Wednesday, 28 June 2017 03:54 p.m.
To: Lianne Darby; Allan Cubitt (acubitt@xtra.co.nz)
Subject: CC Otago Ltd Subdivision 2017-43 - ORC comment
Attachments: CC Otago Limited SUB-2017-43 91 Formby Street Outram ORC natural hazards....pdf; CC Otago Limited SUB-2017-43 99 Formby Street Outram ORC Natural Hazards....pdf

Hi Lianne, Allan

Firstly, apologies for not getting this comment in prior to submissions closing. However, just to confirm I've had a look at this application, and based on the information provided I couldn't see any formal submission from ORC was necessary.

A couple of comments if I might:

Stormwater: if any stormwater is to be discharged off site (such as to the roadside drain) it will be important to ensure that the quantity and quality of that stormwater doesn't exacerbate or increase any adverse effects over that which occurred from the largely greenfield site prior to the proposed development. This is also important in terms of water quality. Policy 5.4.2 of the ORC's Water Plan covers this matter.

Liquefaction: The hazards assessment doesn't discuss that the liquefaction classification for this site is 'Domain C' as recorded on the ORC's natural hazards database. This is a poor rating. I've attached a pdf of the report FYI. While I expect that will be addressed under any DCC building permit process if consent is granted, I thought it important to flag as it does mean a moderate to higher risk of liquefaction-susceptible materials being present in such areas. The full report can be found at
<http://www.orc.govt.nz/Documents/Publications/Natural%20Hazards/2014/Dunedin%20district%20liquefaction.pdf>

The proposed Regional Policy Statement also provides some policy on issues such as fragmentation of rural/productive land but I appreciate while far along in the process it is not yet operative so the weight that can be given is not full in effect.

I hope that's of some assistance for your respective processes, if you have any questions please feel welcome to contact me here at the office.

Regards

Warren.



Warren Hanley
 Resource Planner - Liaison

Otago Regional Council
 70 Stafford St, Private Bag 1954,
 Dunedin 9054
 Phone (03) 470 7443 or 0800 474 082
www.orc.govt.nz

25 May 2017

CC Otago Ltd
C/- Allan Cubitt
Cubitt Consulting Ltd
11 Bedford Street
Dunedin 9012

Dear Allan

RESOURCE CONSENT APPLICATION: SUBDIVISION: SUB-2017-33
LAND USE: LUC-2017-189
99 FORMBY STREET
OUTRAM

Your application for the subdivision of 99 Formby Street, Outram, into two lots, and for the subdivision of a site subject to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES), and land use consent for the establishment of the existing dwelling on a new mixed-zoned Lot 1 with insufficient Rural-zoned land and the existing shed on Lot 2 with a yard breach, was processed on a non-notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991. In considering sections 95A to 95G, it was determined that the effects were no more than minor, there were no potentially affected parties to the application, and there were no special circumstances in relation to the proposal. Therefore, public notification was not required. A Senior Planner considered the application under delegated authority on 25 May 2017.

I advise that the Council has **granted** consent to the applications with conditions. The decision and conditions are shown in the attached certificate.

BACKGROUND TO APPLICATION

This application for the subdivision of 99 Formby Street (SUB-2017-33), and the associated land use proposal (SUB-2017-189), was accompanied by second land use application (LUC-2017-199) to establish a residential dwelling on 91 Formby Street. The two properties are in common ownership but otherwise are separate sites.

91 Formby Street is legally described as Lot 2 Deposited Plan 7816, held in Computer Freehold Register OT370/243, and has an area of 1.6389ha. The site has Residential 5-zoned land at the roadside, and Rural-zoned land to the rear. The proposal was to establish a building platform within the Rural-zoned portion of the site. As the site has insufficient Rural-zoned land for residential activity to be established as a permitted activity, the Council advised the applicant that LUC-2017-199 would be notified. SUB-2017-33 and LUC-2017-189, as part of the same application to Council, would be caught by the decision to notify.

The applicant elected to withdraw LUC-2017-199 from the proposal, thereby allowing SUB-2017-33 and LUC-2017-189 to proceed on a non-notified basis.

A new application for the establishment of a dwelling on 91 Formby Street has been submitted to Council on 17 May 2017 as LUC-2017-222. This application is being notified

along with a further subdivision of 99 Formby Street (in effect, Stage 2), SUB-2017-43, and land use consent for the residential development of the new lots, LUC-2017-223. These applications do not feature as part of this consent.

DESCRIPTION OF ACTIVITY

The proposed subdivision of this consent seeks to subdivide 99 Formby Street into two lots. Proposed Lot 1 will be a site of 1380m² containing the existing house. The new side and rear boundaries will be aligned with the existing hedgelines, therefore reflecting the existing curtilage of the house. Lot 1 will have frontage to Formby Street, and will utilise the existing access.

Proposed Lot 2 will be a site of approximately 3.4ha, with frontage to Formby Street and Huntly Road. It will be almost entirely vacant except for a shed situated next the boundary with proposed Lot 1.

REASONS FOR APPLICATION

Dunedin currently has two district plans: The Dunedin City District Plan and the Proposed Section Generation Dunedin City District Plan (the Proposed Plan). The Proposed Plan was notified on 26 September 2015 and is currently proceeding through the public process of becoming the operative plan. Until the rules of the Proposed Plan become operative, the current District Plan remains the operative plan. Where the rules of the Proposed Plan have been given effect, the provisions of both plans need to be considered.

Section 88A of the Resource Management Act 1991 states that the activity status of an application is determined at the time of lodging the consent. The activity status could, therefore, be determined by the current District Plan or the Proposed Plan, depending on which rules are operative at the time. Nevertheless, even if it is the current District Plan which determines the activity status of the application, the rules of a proposed plan must be considered during the assessment of the application pursuant to section 104(1)(b) of the Act.

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

The Dunedin City District Plan.

The subject site is zoned **Residential 5** along the Formby Street frontage, and **Rural** elsewhere. The general area is shown on the Hazards Register as being subject to **10111 – Seismic (intensified shaking)**, **11407 – Seismic (liquefaction)**, **11548 – Contaminated Land** and **11582 – Flood (overland flow path)**.

Subdivision

Rule 18.5.1(iii) lists subdivision in the Residential zones as a restricted discretionary activity where the application complies with Rules 18.5.3 to 18.5.6, and 18.5.9 to 18.5.12, and each site complies with minimum area and frontage requirements of the relevant zone. Both new lots will contain over 1000m² of Residential 5-zoned land.

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 at least 15.0ha. Neither new lot will have 15.0ha of Rural-zoned land. For this reason, the proposed subdivision is considered to be a **non-complying** subdivision pursuant to Rule 18.5.2.

Land Use

Rule 8.11.1(i) lists residential activity at a density of not less than 1000m² of site area per residential unit as being a permitted activity for the Residential 5 zone, subject to compliance with the performance criteria. Rule 6.5.2(iii) lists residential activity at a density of one residential unit per site provided the site is not less than 15.0ha as being a permitted activity for the Rural zone. The existing dwelling on proposed Lot 1 will be located on a mixed-zoned site with less than 15.0ha of Rural zoned land. Accordingly, the existing residential activity of Lot 1 is considered to be a **non-complying** activity pursuant to Rule 6.5.7(i).

Although not strictly applicable to non-complying activities, the performance criteria of Rule 8.11.2 provide guidance as to acceptable use of the site. The existing residential development will fail to comply with the following:

- Rule 8.11.2(i) specifies front yards of 4.5m and side and rear yards of 2.0m. The existing garage has existing front yard and side yard breaches that do not change with the proposal.
- Rule 8.11.2(ii) specifies height plane angles of 63° measured from existing ground level at the boundary. The existing garage is likely to have an existing side boundary height plane angle breach. The existing house is likely to have a new side boundary breach in respect of the new southern side boundary.

There is no proposal to develop Lot 2 as part of this proposal. The further subdivision and residential development of this land will be assessed as part of SUB-2017-43 and LUC-2017-223 currently being processed by Council on a notified basis.

Rule 6.5.2(i) lists farming as a permitted activity for Rural-zoned land, and Rule 6.5.2(ix) lists accessory buildings for permitted activities as being permitted in their own right, subject to compliance with the performance criteria of Rule 6.5.3. The farming of Lot 2 is therefore permitted, but the existing farm shed will fail to comply with the following:

- Rule 6.5.3(i)(b)(ii) requires buildings other than those housing animals to maintain a yard of 6.0m. The shed will breach the new yard space of Lot 2 by approximately 6.0m.

The existing shed on Lot 2 is considered to be a **restricted discretionary** activity pursuant to Rule 6.5.5(i).

The Proposed Plan

The site is zoned **Township and Settlement** along the Formby Street frontage, and **Rural – Taieri Plains** elsewhere. It has **high class soils**. It is **Hazard 2 – Flood**. There is **No DCC Reticulated Wastewater** for the Town and Settlement zone.

Subdivision Activity:

Rule 15.3.5.2 lists general subdivision in the residential zones as being a restricted discretionary activity subject to compliance with the performance criteria. Rule 15.7.4.1(i) sets the minimum site size for the Township and Settlement zone (no DCC reticulated wastewater mapped area) as being 1000m². Both new lots will have more than 1000m² of Township and Settlement zoned land. The subdivision is considered to be a restricted discretionary activity pursuant to Rule 15.3.5.2. This rule is not in effect.

Rule 16.3.5.1 lists general subdivision in the Rural zones as being a restricted discretionary activity subject to compliance with the performance standards. Rule 16.7.4 is in effect and sets the minimum site size for the Rural – Taieri Plains zone as 40.0ha. Neither of the mixed zoned lots will have more than 40.0ha of Rural-zoned land. Accordingly, the proposed subdivision is considered to be a **non-complying** activity pursuant to Rule 16.7.4.3.

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

Land Use Activity:

Rule 15.3.3.3 lists residential activity as a permitted activity in the residential zones subject to the performance criteria. On the basis of information available, the existing residential activity of Lot 1 is considered to be a permitted activity.

Rule 16.3.3.23 lists residential activity as a permitted activity in the rural zones subject to the performance criteria. Rule 16.5.2.1(g) requires at least 25ha within a site in order to establish

the first residential dwelling. Proposed Lot 1 will have less than 25.0ha of Rural-zoned land, and the existing residential activity is considered to be a non-complying activity pursuant to Rule 16.5.2.3. This rule is not in effect or operative.

Development Activity:

There is no new development proposed for the new lots in either the Township and Settlement zone or the Rural-Taieri Plains zone as part of this consent.

Overall Proposed Plan Status:

Having regard to both the land use and development activity components under the Proposed Plan, the land use proposal is considered to be a non-complying activity.

Summary

The application was lodged on 27 April 2017, after the close of submissions on the Proposed Plan. The zone rules are subject to submissions and could change as a result of the subdivision process. However, Rule 16.7.4 (regarding minimum site size for Rural-zoned land) is in effect. Accordingly, the Proposed Plan rules are not relevant to the activity status of the application as determined at the time of lodgement except for the rule regarding minimum lot size of a Rural-zoned property.

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

At the time of issuing this subdivision decision, the Proposed Plan rule regarding minimum site size for Rural sites has been given effect, and is applicable to this application, but is subject to submissions. All other relevant rules are not in effect and are also subject to submissions. The rules could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this subdivision application except for the minimum site size rule which needs to be weighted accordingly.

NES Soil Contamination Considerations:

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

The applicant has submitted a preliminary site investigation report (PSI) dated November 2015, prepared by Environmental Consultants Otago Ltd ('EC Otago'). The PSI confirms that there is historical evidence of HAIL land use occurring on this land, listing categories A1, A10, and A17. As such, the Council needs to issue consent under the provisions of the NES for the subdivision of a HAIL site. Given that a Detailed Site Investigation report for the site does not exist, the consent will be a **discretionary** activity pursuant to Regulation 11 of the NES.

Overall, taking into consideration the District Plan, Proposed Plan and NES activity statuses, the subdivision is considered to be a **non-complying** activity.

This consent does not grant consent under the NES for the change of use of the HAIL site, or the disturbance of soils. These will be addressed at the time of SUB-2017-43 and LUC-2017-223 when new development of Lot 2 is anticipated, should consent be granted. Given that Lot 1 is to be separated from the farmland and will not feature in any future investigation of the soils undertaken as part of SUB-2017-43, a detailed site investigation of the soils around the shed on-site will be required as part of this consent.

PLANNING ASSESSMENT

Affected Persons

No affected party approvals have been submitted with the application. No persons are considered to be adversely affected by this proposal for the reasons given below in the section on the Effects on the Environment.

Effects on the Environment

The following assessment of effects on the environment has been carried out in accordance with section 104(1) of the Resource Management Act 1991. It addresses those assessment matters listed in sections 6.7, 8.13 and 18.6 of the District Plan and Rule 16.7.4 of the Proposed Plan considered relevant to the proposed activity, and is carried out on the basis that the subject site is situated on the urban fringe of Outram. The township is to the northeast of the subject site, the rugby club is across Formby Street, and there is a line of residential properties along the southern side of Huntly Road. Land to the west of the subject site is rural farm land with scattered housing.

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

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

The proposed subdivision will separate the house from the farmland of the subject site. Proposed Lot 1 will be the house site, and will have an area of approximately 1380m². This will include approximately 280m² of Rural-zoned land at the rear of the house. The proposed boundaries have been selected to align with the existing hedging, and as such, will reflect the present curtilage of the house. As this land has established residential activity, the inclusion of Rural-zoned land in the lot is acceptable, and the placement of the boundaries in line with the hedges is a pragmatic approach to the subdivision.

Proposed Lot 2 is a mixed-zoned site of 3.4ha. There is over 1000m² of Residential 5-zoned land within the site, but less than 15.0ha of Rural-zoned land. However, the subject site is smaller than 15.0ha, and the proposed subdivision does not fragment the Rural-zoned land except in a very minor way in respect of Lot 1 and land that is zoned Rural but not currently used for rural purposes. Therefore, the area of proposed Lot 2 is acceptable.

Proposed Lot 1 is already developed. Proposed Lot 2 is currently used for farming, and there is sufficient Residential 5-zoned land within the site for a dwelling to be established without encroaching onto Rural-zoned land although consent, in my opinion, will still be required as a mixed-zoned site with insufficient Rural-zoned land. There are no known geotechnical issues affecting this land which will compromise the building potential of Lot 2. Accordingly, there is no expectation that the proposed subdivision will create any site having physical limitations rendering it unsuitable for future use.

2. Easements (18.6.1(i))

There are no easements registered on the title of the subject site.

There are two historic gazette notices 2781 and 2782 dating from 1915. These exempt the requirement to take road widening at the time of subdivision along the Formby Street and Huntly Road frontages of the subject site and therefore have no real consequences for the subject site.

No new easements are proposed as part of this application.

3. Infrastructure (18.6.2(d), (e), (i), (j), (n), (o), and (p))

The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. A review of the Council's GIS records shows a 100mm diameter water pipe in Formby Street.

Water Services

The Consents and Compliance Officer advises that the existing dwelling on proposed Lot 1 has a metered water service (meter #310173178). There is no water connection proposed for Lot 2, and no water can be taken beyond the boundary of Lot 1 to supply Lot 2. Any existing pipes must be plugged.

In respect of Lot 2, stormwater collected from roof surfaces may be used for domestic water supply and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.

Fire-fighting Requirements

All aspects relating to the availability of 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. There is a fire hydrant (WFH04699) 87.0m from 99 Formby Street. Based on SNZ PAS 4509:2008 a W3 (25l/s) zone requires a Fire Hydrant within 135 m and a second within 270 m. The subdivision is compliant with these fire hydrant requirements.

Wastewater Services

There are no reticulated wastewater services available for connection in Outram. 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.

Stormwater Services

There is no reticulated stormwater infrastructure in Outram. Disposal of stormwater is to the water tables and/or watercourses on-site, or to suitably designed on-site soak-away infiltration system, or to a rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.

Private Drainage

Any private drainage matters will be addressed at the time of building consent application for new development. No new development is anticipated as a result of this subdivision.

Easements

All rights are reserved for any necessary easements required by this subdivision.

Conclusion

The Water and Waste Services Business Unit has no issues with the proposal and does not require any conditions to be placed on consent.

5. Hazards (18.6.1(t))

The Consulting Engineer, MWH, has considered the application. He notes that the application correctly refers to the prevailing flood zoning and states:

'The proposed District Plan identifies the area as a Hazard 2 - Flood zone. The proposed District Plan consider this a moderate risk (1:50 - 1:200 or AER range 0.5 to 2%) from natural hazards. While the rules relating to this have no legal effect, we note that this property is elevated land within Outram and considerably higher (1 - 2m) than the residential land to the

north. Hence we do not envisage the need for the specification of a minimum floor level.'

The Consulting Engineer advises that this approach for excluding the requirement for a minimum floor level sounds reasonable but should still be confirmed with Building Control prior to building. There is no development anticipated as part of this consent.

In terms of natural hazards affecting this land, the Consulting Engineer comments that the site is recorded on the GNS Assessment of Liquefaction hazards in Dunedin City, dated May 2014, as being within:

- Domain C. The ground is predominantly underlain by poorly consolidated marine or estuarine sediments with a shallow groundwater table. There is considered to be a moderate to high likelihood of liquefaction-susceptible materials being present in some parts of the areas classified as Domain C.

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 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 will 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.

MWH generally recommends that, for larger subdivisions, the requirement to quantify this risk should lie with the developer. In this case, the proposal is for a two-lot subdivision where Lot 1 is already developed and there is no development proposal for Lot 2 as part of this consent. As such, there are no requirements for this consent.

6. NES Matters

The application was submitted with a Preliminary Site Investigation (PSI), dated November 2015, as prepared by EC Otago Ltd. The report notes that the subject site has been used as a former market garden, and the Council's records show it to have been used for an activity on the hazardous activities and industries list (HAIL, market gardening). The market gardening use and the possible presence of bulk storage tanks for fuel have the potential to contaminate soils. As such, the applicant has had soil sampling undertaken and the PSI prepared. The owner identified an underground storage tank site (UST) beside the existing three-bay shed on-site (within proposed Lot 2), although this UST is no longer used and the Council records do not refer to this tank at all. An Ag-Chemical shed measuring 3.0m by 3.0m is situated on proposed Lot 1, behind the house.

The soil sampling took nine samples across the subject site. Sample 1 targeted the UST site, while the other samples were taken as sets of one individual sample and three composite samples. The analysis of the results indicated that a low level of DDT is present, and cadmium is present at a slightly elevated level. Sample 1 was very slightly above the lead results from the remainder of the site, indicating that fuel dispensing from the UST might have had a localised effect in the vicinity of the tank.

The report recommends that the UST be removed prior to any residential subdivision, and a tank removal investigation should be undertaken at that time. The samples were analysed for arsenic, mercury cadmium, lead and the full pesticide suite. There were no instances of any of the analytes approaching or exceeding the rural-residential +25% food production (most conservative) criteria.

Council's Consulting Engineer, MWH, has considered the PSI. He notes that, *'In none of the analysed soil samples did concentrations of analysed contaminants approach applicable Soil Guideline Values for the relevant future land use (correctly assessed by EC Otago as being "Rural residential with 25% produce consumption".'* MWH concludes:

'The PSI conducted by EC Otago on the 91 and 99 Formby St properties is thorough and fit for purpose. The conclusions are endorsed in this review, with particular note of the fact that further investigation of the underground fuel storage tank location is necessary in due course as the subdivision work proceeds on this land.'

This consent is for the separation of the house from the balance of the land and no new development is anticipated, although future development of Lot 2 is possible. To this end, the applicant has submitted a second subdivision and land use proposal for proposed Lot 2 which is being processed separately from this consent. In the meantime, proposed Lot 1 has established residential use, and Lot 2 will continue as farming use with a potential need for a UST as part of the farming operation. For that reason, this consent grants consent to subdivide a property subject to the NES, but does not provide for the removal or replacement of the UST, the disturbance of soils, and/or the change of use (residential) for proposed Lot 2.

Regarding the small shed storing chemicals on proposed Lot 1, the Consulting Engineer commented in an email dated 25 May 2017:

The storage shed (confirmed by Mrs Choie to be where agrichemicals were stored) certainly has the potential to contribute contaminants to the nearby soil. Also, there was no apparent sampling done by EC Otago in the immediate vicinity of this shed ... The agrichemicals shed (and the lack of any apparent analysis of soils in its immediate vicinity) is a concern but only if the subdivision being proposed is more than just a simple reassignment of property boundaries to split off Lot 1 from Lot 2, without there being any proposal to disturb soil.'

The Consulting Engineer, MWH, initially recommended that an advice notice be placed on consent regarding the requirement for a detailed site investigation around the small shed on Lot 1, should there be any proposal to disturb soils or redevelop Lot 1 in the future. However, given that there is no way of knowing what Lot 1, or the curtilage around the house of Lot 1, will be used for in the future, he now considers that a conservative approach should be adopted at the time of subdivision to determine the degree of contamination, if any, in respect of the existing shed.

7. Earthworks

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

Likewise, this consent does not authorise the disturbance of soils under the NES. Consent under the regulations of the NES might be required irrespective of whether future earthworks breach the performance standards of the District Plan.

8. Transportation (18.6.1(c))

Proposed Lot 1 has an existing access onto Formby Street and a garage on-site. The access is not hard surfaced, and it appears that the garage is not in regular use. The District Plan requires at least one on-site parking area for Lot 1, and as there is insufficient distance between the garage and the front boundary for a car to be parked

in the driveway, it might be necessary to either reutilise the existing garage or have it replaced.

It will be a requirement to have at least one on-site parking space on Lot 1. As the driveway is an existing situation there is no requirement to upgrade the driveway. However, any new driveway formed for Lot will need to be hard surfaced from the edge of the road carriageway to a distance at least 5.0m inside the property boundary.

Proposed Lot 2 has an existing access to the three-bay farm shed from Formby Street. This can continue to serve Lot 2, and as an existing access, it does not need to be upgraded to the District Plan standard. However, any change of use of this access (for example, to serve a dwelling) or the construction of a new access elsewhere will trigger the requirement to have the access hard surfaced from the road carriageway to a distance at least 5.0m inside the property boundary.

7. Amenity Values

One means by which the District Plan maintains the amenity values of an area is through the density provisions of the various zones. In this case, the proposed subdivision will separate the existing dwelling of a mixed-zoned site onto its own title. There is no development of Lot 2 being proposed as part of this application. As such, there will be no visual change to the land arising from the proposed subdivision, and no effects on amenity arising from the proposed subdivision.

Should Lot 2 be developed with a residential dwelling in the future (disregarding the other applications for further subdivision and development), there is sufficient Residential 5-zoned land for this to occur. Residential activity along the roadside of Formby Street is anticipated by the District Plan, and a house built on this land is considered to maintain the amenity values of the zone and area, although consent is likely to be required because of the Rural-zoned land within the same title.

CONSENT DECISION

SUB-2017-33

*That pursuant to section 34A(1) and 104B of the Resource Management Act 1991, and after having regard sections 104 and 104D of the Resource Management Act 1991, the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City District Plan, and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of land subject to the NES, being legally described as Part Section 1 Block V West Taieri Survey District (CFR OT264/53) at 99 Formby Street, Outram, into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as shown on the attached certificate.*

LUC-2017-189

*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 Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of the existing residential activity on the new mixed-zoned site of Lot 1 SUB-2017-33 with insufficient Rural-zoned land, and the existing farm shed on Lot 2 SUB-2017-33 with a yard breach, at 99 Formby Street, Outram, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

REASONS

Effects

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

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan were taken into account when assessing the application.

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

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability)** seek to maintain and enhance the amenity values of Dunedin.
- **Objective 6.2.2 & Policy 6.3.5 (Rural)** seek to maintain and enhance the amenity values associated with the character of the rural areas.
- **Objective 8.2.1 and Policy 8.3.1 (Residential)** that seek to ensure the adverse effects on the amenity values and character of residential areas are avoided, remedied or mitigated.
- **Objective 8.2.2 and Policy 8.3.6 (Residential)** seek to ensure that activities do not adversely affect the special amenity values of rural townships and settlements.
- **Objective 18.2.1 and Policy 18.3.1 (Subdivision)** seek to ensure that subdivision activity takes place in a coordinated and sustainable manner.
- **Objective 18.2.2 and Policy 18.3.5 (Subdivision)** seek to ensure that physical limitations are identified and taken into account at the time of subdivision activity.
- **Objective 18.2.7, Policy 18.3.7 and Policy 18.3.8 (Subdivision)** that seek to ensure that provision is made at the time of subdivision activity for appropriate infrastructure, including management of associated subdivision and development.
- **Objective 20.2.2 and Policy 20.3.2 (Transportation)** seek to ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.
- **Objective 20.2.4 and Policy 20.3.6 (Transportation)** seek to maintain and enhance a safe, efficient and effective transportation network.

Proposed Plan

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

- **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation)** which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.
- **Objective 6.2.1 and Policy 6.2.1.3 (Transportation)** seek to ensure that transport infrastructure is designed and located to ensure the safety and efficiency of the transportation network.
- **Objective 15.2.1 (Residential)** seeks to ensure that residential zones are primarily reserved for residential activities.
- **Objective 15.2.2 (Residential)** seeks to ensure residential activities, development, and subdivision activities provide high quality on-site amenity for residents.
- **Objective 15.2.3 and Policy 15.2.3.1 (Residential)** seek to ensure activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.

- **Objective 15.2.4 (Residential)** seeks to ensure that subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.
- **Objective 16.2.1 (Rural)** seeks to reserve rural zones for productive rural activity and the protection and enhancement of the natural environment.
- **Policy 16.2.1.5 (Rural)** seeks to limited residential activity in the rural zones at a level (density) that supports farming activity.
- **Objective 16.2.3 and Policy 16.2.3.2 (Rural)** seeks residential activity at a density that maintains the rural character values and visual amenity of the rural zones.
- **Policy 16.2.3.8 (Rural)** seeks to only allow subdivision where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.

The proposal is consistent with the relevant policy provisions above.

Section 104D

Section 104D of the Resource Management Act requires that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan. It is my opinion that the proposed subdivision creating two mixed-zoned lots with insufficient Rural-zoned land, and the establishment of the existing residential activity on one of these lots, will have effects which are no more than minor and will not be contrary to the objectives and policies of the District Plan. Therefore Council can exercise its discretion under Section 104D to grant consent subject to the recommended conditions.

Other Matters

Case law has suggested that in order to grant consent to a non-complying activity, the application needs to be a 'true exception' otherwise, in terms of precedent effect, the integrity of the Plan could be undermined. In this instance, the subdivision proposal is non-complying because it will create sites with insufficient Rural-zoned land to meet the minimum site size. The District Plan seeks to maintain the rural land resource for productive purposes. In this case, the proposal does not fragment the Rural-zoned land except in a very small way associated with the existing curtilage of the house. As this land is not used for rural purposes currently, its inclusion in a purely residential site is not considered to detract from the productive potential of the rural land in this subject site.

The land use proposal is non-complying because the existing house will be placed on a mixed-zoned site with insufficient Rural-zoned land. This is largely an existing situation for the house as the new boundaries of Lot 1 have been chosen so as to respect the present curtilage of the house. There will be no visual change to the site occurring as a result of the proposed subdivision. For these reasons, it is considered that the proposed subdivision and land use proposals can be undertaken without undermining the integrity of the District Plan.

Part II Matters

There is no ambiguity, incompleteness or illegality in the District Plan which necessitates resort to Part II of the Act.

RIGHTS OF OBJECTION

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

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

Attn: Senior Planner- Enquiries Plaza, Ground Floor.

Yours faithfully

Lianne Darby
PLANNER

Consent Type: Subdivision and Land Use

Consent Number: SUB-2017-33 & LUC-2017-189

Location of Activity: 99 Formby Street, Outram.

Legal Description: Part Section 1 Block V West Taieri Survey District (CFR OT264/53).

Lapse Date: SUB-2017-33: 25 May 2022, unless the consent has been given effect to before this date.
LUC-2017-189: three years from the signing of the s223 certificate for SUB-2017-33 unless the consent has been given effect to before this date.

SUB-2017-33

*That pursuant to section 34A(1) and 104B of the Resource Management Act 1991, and after having regard sections 104 and 104D of the Resource Management Act 1991, the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City District Plan, and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of land subject to the NES, being legally described as Part Section 1 Block V West Taieri Survey District (CFR OT264/53) at 99 Formby Street, Outram, into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:*

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Pt Sec 1 Blk V West Taieri SD & Land Use consent on Lot 2 DP 781,' and the accompanying information submitted as part of SUB-2017-33 received at Council on 27 April 2017, except where modified by the following:*
2. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.*
3. *That prior to the physical subdivision works commencing, the consent holder shall complete the following:*
 - a) *That a detailed site investigation of the soils around the chemical storage shed on Lot 1 shall be prepared by a suitably qualified person to determine the concentrations of relevant contaminants that may be present within the soils. The results shall be submitted to the Council for its records.*
 - b) *That, should the concentrations of any contaminants be higher than is acceptable by the Ministry of the Environment Soil Guideline Values for residential use the land shall be remediated to ensure it is safe for residential use.*

- c) *Land use consent under the regulations of the 'National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health' shall be obtained for any works required to address the remediation of contaminated soils on Lot 1 that breach permitted activity thresholds in the standard.*
 - d) *That within three months of completing any works required to satisfy condition 3(b) above, a Validation Report prepared by a suitably qualified person shall be submitted to Council to confirm that the objectives of the works have been achieved.*
 - e) *Any requirements of the land use consent of condition 3(c) above shall be completed prior to subdivision works of condition 4 below commencing.*
4. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
- a) *Any existing water pipes to the land of proposed Lot 2 from the metered supply serving the house of proposed Lot 1 shall be cut and plugged at the boundary.*
 - b) *That at least one on-site parking space for a 90th percentile car shall be provided on Lot 1. The parking shall be compliant with the requirements of Appendix 20B of the District Plan, and shall be available for daily use (i.e. the presence of a garage does not meet the intent of this condition if it is not used for parking).*

LUC-2017-189

*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 Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of the existing residential activity on the new mixed-zoned site of Lot 1 SUB-2017-33 with insufficient Rural-zoned land, and the existing farm shed on Lot 2 SUB-2017-33 with a yard breach, at 99 Formby Street, Outram, subject to conditions imposed under section 108 of the Act, as follows:*

1. *The proposal shall be given effect to generally in accordance with the plan prepared by Craig Horne Registered Surveyor entitled, 'Proposed Subdivision of Pt Sec 1 Blk V West Taieri SD & Land Use consent on Lot 2 DP 781,' and the accompanying information submitted as part of LUC-2017-189 received at Council on 27 April 2017.*

Advice Notes:

1. In addition to the conditions of a resource consent, the Resource Management Act establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake. A similar responsibility exists under the Health Act 1956.
2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

3. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
4. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for any construction work as part of the subdivision.
5. 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.
6. 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 Guidelines for the Canterbury Region' Report No. CRCR06/23.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guidelines for Small Sites."
7. All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service. Any new development must be within 135m of a fire hydrant, otherwise the proposal will be non-compliant with fire-fighting requirements.
8. Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
9. 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 Transport). A new access to Lot 1 or 2, or the change of use of the existing accesses, will require the access to be formed to the District Plan standards.
10. 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.
11. 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.
12. There is a potential for this land to flood given its low-lying nature. The Council has not set a minimum floor level for new development on the new lots as part of this resource consent, but it is advised that there might be a minimum floor level requirement at the time of building consent application. The applicant should be prepared to build at a level some distance above ground level. Building Control Services will determine an appropriate level.

13. The subject site is considered to be a HAIL site. This consent addresses the subdivision of a HAIL site only. Any proposal for the removal or replacement of an underground storage tank, the disturbance of soils, and/or the change of use of the land will require further resource consent under the NES.

Issued at Dunedin this 25 May 2017.

Lianne Darby
Planner

COPY OF PLAN: Not to scale.

Consent is for the subdivision of Pt Sec 1 Blk V West Taieri SD only. The application for a building platform on Lot 2 DP 7816 has been withdrawn.

