

DUNEDIN CITY DISTRICT PLAN

**PROPOSED DISTRICT PLAN CHANGE 9**

**BRAESIDE RESIDENTIAL 6 ZONE**

Section 32 Report

May



**DUNEDIN CITY**  
**COUNCIL**

*Kaunihera-a-rohe o Otago*

**CITY PLANNING**

2009

## **SECTION 32 REPORT**

### **Proposed District Plan Change: Braeside Residential 6 Zone**

#### **PURPOSE OF REPORT**

Before a proposed plan change can be publicly notified the Council is required under section 32 of the Resource Management Act 1991 (the Act) to carry out an evaluation of alternatives, costs and benefits of the proposed change.

As outlined in section 32 of the Act the evaluation must examine:

- *The extent to which each objective is the most appropriate way to achieve the purpose of the Act; and*
- *Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

An evaluation must also take into account:

- *The benefits and costs of policies, rules, or other methods; and*
- *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

Benefits and costs are defined as including benefits and costs of any kind, whether monetary or non-monetary.

A report must be prepared summarising the evaluation and giving reasons for the evaluation. The report must be available for public inspection at the time the proposed change is publicly notified.

This report summarises the evaluation of Proposed Plan Change No.9: Braeside Residential 6 Zone amendment to the Dunedin City District Plan as required by the Act. It should be read together with the text of the Plan Change itself.

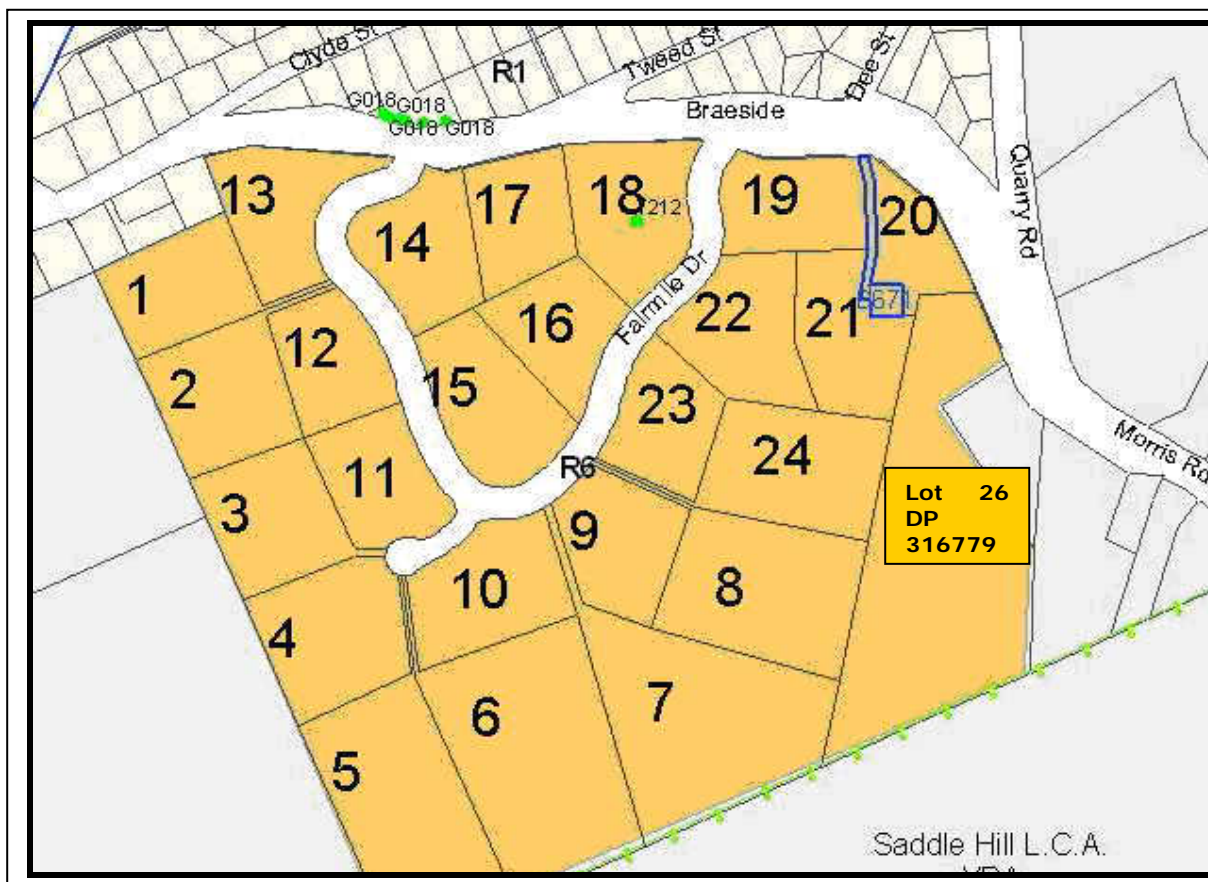
#### **CONTEXT**

Section 8 of the District Plan, the residential zones section, contains objectives, policies, rules and methods relating to the control of activities within the residential zones. Specifically, for the purpose of this report, Section 8.12 relates to the Residential 6 Zone.

#### **SITE HISTORY**

The rezoning of Braeside as Residential 6 was brought about when the Proposed District Plan zoned a part of Braeside as Residential 1 and a part Rural. The original land owners of the Braeside site opposed the zoning and requested that the area be rezoned to allow large lot subdivision. The plan change was the subject of a Planning Tribunal case. Subsequently, Braeside was rezoned Residential 6 in 2000. The rules governing the Braeside Residential 6 Zone were handed down from Environment Court Decision C199/2000 on 12 and 18 December 2000.

The area was subject to a staged subdivision in 2001 (RMA2001-0422), which created a total of 32 lots within the Braeside area, 7 of which are vested as road, leaving 25 lots capable of supporting residential development (Figure 1).



**FIGURE 1: BRAESIDE SUBDIVISION**

(NB: Lot 25 DP 316779 and Lots 27-32 DP 316779 are vested as road labelled Fairmile Dr)

Originally, Lot 26 DP 316779 (the 25<sup>th</sup> lot) was planted in pine trees and it was not intended to be developed for a residential purpose as a permitted activity, as outlined in the subdivision consent (RMA2001-0422). However, the trees were harvested and consent has been recently obtained to enable residential activity to be established on this lot. The resource consent (LUC-2008-201) was assessed as a non-complying activity. As such, Lot 26 DP 316779 stands alone and is included within this report for context purposes only.

#### **RULE INTERPRETATION**

A technical issue has been discovered in relation to the rules governing the Residential 6 Zone of the District Plan as they relate to the Braeside Area. The relevant rule of the zone (8.12.1(i)(e)) states that residential activity is a permitted activity at:

*Braeside at a density of not less than 5000 m<sup>2</sup> of site area per residential unit, provided that there shall be a maximum number of 24 allotments and that only one residential unit may be established on each allotment. [Amended by C199/2000, 12 & 18/12/00]*

The total area of the Braeside residential development is capable of supporting 34 lots at a density of 5000 m<sup>2</sup> each. This number of lots increases to 38, if the area from the 25<sup>th</sup> lot is

included in the calculation. The rationale behind the rule intended to limit the number of lots, able to be developed for residential purposes, to 24.

Interpretation of the rule, confirmed by legal advice, is such that residential activity may not be undertaken as a permitted activity because the current number of allotments exceeds that permitted by the rule. There was no distinction made between residential, other and roading allotments.

As a result of the wording of the rule, it would have been expedient to issue a land use consent to authorise residential activity, for each of the intended residential lots, at the same time as the subdivision consent was granted because the subdivision created in excess of 24 allotments.

As an aside, it is noted that the establishment of residential activity on Lots 1-24 would be assessed as a non-complying activity, making the conditions relating to permitted activities listed in Rule 8.12.2, as they relate to the Braeside Residential 6 zone, redundant.

Building consent has been issued for 16 of the 24 residential lots and, in the majority of instances, building has been completed and signed off by a Building Inspector. There are eight sites, which are yet to be developed. Each of the developed sites technically requires retrospective resource consent for the dwellings established on the site. Even if one was to credit the lots with existing use rights, should the land owner seek to alter their dwelling or should they need to rebuild for any reason, they would lose any existing use rights and would require resource consent at that stage. In addition, the sites which are yet to be developed will require resource consent to undertake any residential development on each of those lots, regardless of whether they comply with the performance standards of the zone.

## **PROPOSED PLAN CHANGE**

The proposed Plan Change seeks to amend the permitted activity rule from :

### ***Rule 8.12.1 Permitted Activities***

*The following activities are permitted activities provided that they comply with the conditions in Rule 8.12.2 of the Residential 6 Zone:*

#### *(i) Residential Activity in:*

- (e) Braeside at a density of not less than 5000 m<sup>2</sup> of site area per residential unit, provided that there shall be a maximum number of 24 allotments and that only one residential unit may be established on each allotment. [Amended by C199/2000, 12 & 18/12/00]*

To read:

### ***Rule 8.12.1 Permitted Activities***

*The following activities are permitted activities provided that they comply with the conditions in Rule 8.12.2 of the Residential 6 Zone:*

#### *(i) Residential Activity in:*

- (e) Braeside as shown as Lots 1-24 in the Concept Plan in Appendix 8.4, and that only one residential unit may be established on each site.*

In addition, this plan change also seeks to amend the conditions relating to the permitted activity rule to reflect the defined lot numbers as follows:

### ***Rule 8.12.2 Conditions Attaching to Permitted Activities***

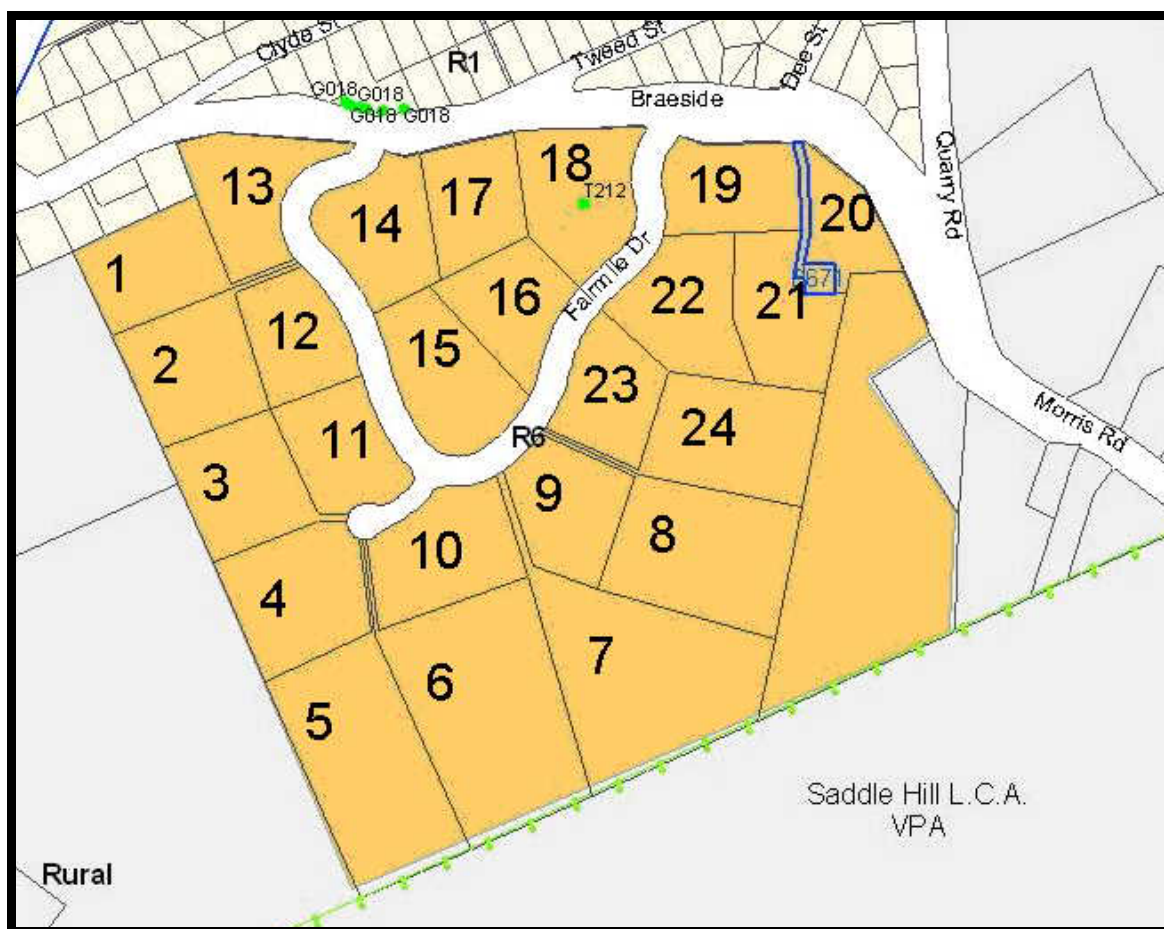
#### *(xi) Minimum Site*

- (a) Minimum Area for Front and Rear Sites (excluding the access strip)*

(v) *Braeside as shown in the Concept Plan in Appendix 8.4 and only one residential unit per site.*

It is proposed that the Concept Plan in Appendix 8.4 (Figure 2) will show the Lots 1-24, which may support residential activity as a permitted activity, providing any residential unit complies with the bulk and location rules of the zone. The Concept Plan will further define the intention of the rule by identifying those lots intended for residential development and will clearly exclude the 25<sup>th</sup> lot from the permitted activity rule.

Without the Concept Plan included as part of the proposed plan change, development may be undertaken on a "first in, first served" basis where any one of the lots (including the 25<sup>th</sup> lot) may be developed as of right, leaving the last lot unable to be developed as a permitted activity. This is undesirable, and potentially litigious, as each of the Lots 1-24 were bought and sold in good faith on the understanding that residential activity could be established on the sites, as of right. This perspective is further cemented by the application for, and the granting of, resource consent to the 25<sup>th</sup> Lot to enable residential development.



**FIGURE 2 – LOTS 1-24 BRAESIDE RESIDENTIAL 6 ZONE CONCEPT PLAN IN APPENDIX 8.4**

#### **APPROPRIATENESS OF EXISTING DISTRICT PLAN MECHANISMS**

Section 32 of the Act requires that the Council is satisfied both that the objectives of the District Plan are the most appropriate means of achieving the purpose of the Act and that the policies, rules and methods are the most appropriate means of achieving the Plan's objectives.

The proposed plan change does not introduce any new objectives, policies or methods to the Plan. The purpose of the proposed change is to clarify the rules in the plan to identify those

lots within the Residential 6 Zone which may be developed as a permitted activity, thereby, helping to achieve the existing objectives and policies in the Plan.

### **SCOPE OF PROPOSED PLAN CHANGE**

The scope of the proposed plan change neither alters nor calls for submissions on any of the existing resource management issues, objectives, policies or methods in the Plan. The scope of the change is limited to amending the rules relating to the Braeside Residential 6 Zone by specifically identifying those lots where residential development is intended to be undertaken as a permitted activity. The inclusion of the Concept Plan in Appendix 8.4 clearly defines those lots intended to support residential activity.

### **CONSULTATION PROCESS**

After initial assessment, the land owners and residents were determined to be those parties who would be affected by the plan change. It was considered that the proposed plan change would not affect any parties beyond the Braeside Residential 6 Zone. The land owners and residents were invited to a public meeting to discuss the proposed plan change. The meeting was held on 25 March 2009, with two attendees. The proposed plan change was outlined and the implications arising from retaining the status quo or implementing the proposed change were discussed in full. The resulting discussion was positive and encouraging.

### **OPTIONS FOR REVIEW OF THE BRAESIDE RESIDENTIAL 6 ZONE**

#### **Option 1: Status Quo**

No changes to the Dunedin City District Plan

#### **Option 2: Amend Braeside Residential 6 Rules with Concept Plan**

Amend Rules 8.12.1 (i)(e) and 8.12.2(xi)(a)(v) and include Lots 1-24 Braeside Residential 6 Zone Concept Plan in Appendix 8.4.

#### **Option 3: Amend Braeside Residential 6 Rules without Concept Plan**

Amend Rules 8.12.1 (i)(e) and 8.12.2(xi)(a)(v) (without Braeside Residential 6 Zone Concept Plan in Appendix 8.4) to rely on a density restriction of 5000 m<sup>2</sup> per lot and only 24 residential units in total.

#### **Option 4: Incorporate Braeside Plan Change into Future Residential Section Plan Change**

Defer the proposed Braeside Plan Change until a review of the residential section of the District Plan is initiated.

#### **Option 5: Issue Resource Consents**

Issue Resource Consents for all current and future works occurring within the Braeside Residential 6 Zone, regardless of whether the works comply with the performance standards of the zone.



**TABLE 1 – ANALYSIS OF OPTIONS TO ADDRESS ISSUE**

	<b>OPTION 1 Status Quo</b>	<b>OPTION 2 Amend Rules 8.12.1 (i) (e) and 8.12.2(xi) (a) (v) and include Concept Plan 8.4</b>	<b>OPTION 3 Amend Braeside Residential 6 Rules without Concept Plan 8.4</b>	<b>OPTION 4: Braeside Plan Change into Future Residential Section Plan Change</b>	<b>Option 5: Issue resource consent to authorise existing and future dwellings within the Braeside area.</b>
<b>Benefits</b>	<p>Environmental benefits:</p> <ul style="list-style-type: none"> <li>• None identified.</li> </ul> <p>Social benefits:</p> <ul style="list-style-type: none"> <li>• None identified.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>• Administrative costs of plan change would be avoided.</li> </ul>	<p>Environmental benefits:</p> <ul style="list-style-type: none"> <li>• Lots 1-24 would be able to undertake residential activity as of right.</li> <li>• Lots 1-24 intended for residential development are clearly identified.</li> </ul> <p>Social benefits:</p> <ul style="list-style-type: none"> <li>• Ensure that development which has already occurred is legitimised providing security and peace of mind for land owners, and ensuring that identified lots yet to be developed may do so without embarking on a resource consent process.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>• Potential costs of litigation (medium-high risk) would be avoided.</li> <li>• Residential units would become lawfully established which would simplify on-selling.</li> </ul>	<p>Environmental benefits:</p> <ul style="list-style-type: none"> <li>• Density will be restricted to lots no less than 5000 m<sup>2</sup>, with a total of 24 residential units</li> </ul> <p>Social benefits:</p> <ul style="list-style-type: none"> <li>• Ensure that development which has already occurred is legitimised providing security and peace of mind for land owners, and ensuring that most land yet to be developed may do so without embarking on a resource consent process.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>• Potential costs of litigation (medium-high risk) would be avoided.</li> <li>• Residential units would become lawfully established which would simplify on-selling.</li> <li>• Land owners would not need to obtain a land use consent should they wish to extend or rebuild</li> </ul>	<p>Environmental benefits:</p> <ul style="list-style-type: none"> <li>• Identified issue regarding the Braeside area will be addressed during future residential plan change.</li> </ul> <p>Social benefits:</p> <ul style="list-style-type: none"> <li>• Once future plan change is initiated landowner concerns will be addressed.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>• Administrative costs of Braeside plan change would be absorbed into future residential plan change.</li> </ul>	<p>Environmental benefits:</p> <ul style="list-style-type: none"> <li>• Each existing and future dwelling would be authorised by resource consent.</li> </ul> <p>Social benefits:</p> <ul style="list-style-type: none"> <li>• Existing and future dwellings will be authorised providing certainty and peace of mind to land owners.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>• Determination of whether Council or the land owners are responsible for costs associated for the processing of initial resource consents and subsequent variations and as such economic benefits cannot be assessed at this time.</li> </ul>

		<ul style="list-style-type: none"> <li>Land owners would not need to obtain a land use consent should they wish to extend or rebuild existing dwellings.</li> <li>Undeveloped sites will not require resource consent to establish residential activity.</li> </ul>	<ul style="list-style-type: none"> <li>existing dwellings.</li> <li>Most undeveloped sites will not require resource consent to establish residential activity.</li> </ul>		
<b>Costs</b>	<p>Environmental costs:</p> <ul style="list-style-type: none"> <li>The council is left with a residential zone on which no residential activity may be undertaken as of right.</li> </ul> <p>Social costs:</p> <ul style="list-style-type: none"> <li>Land owners are left holding land which they understood that they could develop as of right creating uncertainty and mistrust.</li> </ul> <p>Economic costs:</p> <ul style="list-style-type: none"> <li>Each and every land owner would be required to go through the consent process as their dwellings are non-complying.</li> <li>Land values are likely to decrease as land cannot be developed or existing dwellings altered without resource consent, thereby, reducing</li> </ul>	<p>Environmental costs:</p> <ul style="list-style-type: none"> <li>None identified.</li> </ul> <p>Social costs:</p> <ul style="list-style-type: none"> <li>None identified.</li> </ul> <p>Economic costs:</p> <ul style="list-style-type: none"> <li>Administrative costs of plan change.</li> </ul>	<p>Environmental costs:</p> <ul style="list-style-type: none"> <li>Lots will be developed on the "first in, first served" basis meaning an intended residential lot may require resource consent.</li> </ul> <p>Social costs:</p> <ul style="list-style-type: none"> <li>Development would occur on a first in first served basis, creating uncertainty and undermining "good faith" transactions.</li> </ul> <p>Economic costs:</p> <ul style="list-style-type: none"> <li>Administrative costs of plan change.</li> <li>Liability issues for the original developer of the Braeside subdivision regarding last lot to be developed as lots were purchased in good faith that residential activity could be lawfully established on Lots 1-24.</li> <li>Liability issues for the</li> </ul>	<p>Environmental costs:</p> <ul style="list-style-type: none"> <li>No time frame set for future residential plan change. No immediate resolution.</li> </ul> <p>Social costs:</p> <ul style="list-style-type: none"> <li>No timeframe has been indicated for residential plan change and as such uncertainty still surrounds status of existing and future dwellings.</li> </ul> <p>Economic costs:</p> <ul style="list-style-type: none"> <li>Increase in cost to future residential plan change</li> </ul>	<p>Environmental costs:</p> <ul style="list-style-type: none"> <li>Each existing and future dwelling would be required to go through a consent process. All future alterations to consented dwelling would also be required to go through a consent process.</li> </ul> <p>Social costs:</p> <ul style="list-style-type: none"> <li>Existing and future dwellings will be authorised providing certainty and peace of mind to land owners.</li> </ul> <p>Economic benefits:</p> <ul style="list-style-type: none"> <li>Determination of whether Council or the land owners are responsible for costs associated for the processing of initial resource consents and subsequent variations and as such economic costs cannot be assessed at this time.</li> </ul>



	<ul style="list-style-type: none"> <li>marketability to potential owners.</li> <li>Liability issues for the Council regarding advice given relating to the Braeside lots during due diligence and building consent process</li> <li>Liability issues for the original developer of the Braeside subdivision as lots were purchased in good faith that residential activity could be lawfully established on the lots.</li> </ul>		Council regarding last lot to be developed depending on extent of due diligence undertaken by land owner.		
<b>Effectiveness and efficiency</b>	Maintaining the status quo would not be an effective approach, as each lot would require resource consent to establish residential development of the lots. The area would remain zoned for a residential purpose with no residential activity able to be undertaken as of right.	This approach effectively addresses the issue by providing for permitted residential activity within a residential zone as intended by the District Plan.	This approach addresses the issue by providing for permitted residential activity within a residential zone as intended by the District Plan. However, it allows lots to be developed on a "first in, first served" basis and may result in one of the Lots 1-24 requiring resource consent in order to be developed contrary to the Environment Court ruling.	This approach will address the issue at some point in the future. Until this time there is uncertainty about the lawfulness of the existing dwellings in the Braeside area. All new dwellings will require resource consent until the plan change has become operative.	This approach will address the issue but will require each existing and future dwelling to undergo a resource consent process. In addition, each subsequent alteration to the site, which requires a building consent, may also need either a variation to the existing resource consent or an additional resource consent. The processing cost of these resource consents will also need to be addressed to identify where liability lies.

## **CONCLUSION**

After assessing the costs, benefits, effectiveness and efficiency of each option, it is considered that Option 2 is the preferred option. The rewording of the rule will authorise residential activity to occur within the Braeside residential 6 Zone as intended by the District Plan and, therefore, it is the most appropriate means for giving effect to the objectives of the District Plan. The Concept Plan will clearly define the lots intended to support residential activity as of right, while clearly excluding the roading allotments and the 25<sup>th</sup> lot. The Proposed Plan Change would correct the technical error of the existing rule and is considered the most effective and efficient means of ensuring the rule gives effect to the intent of the plan. No significant disadvantages to this course of action have been identified.

Kirstyn Lindsay  
**Planner**

DUNEDIN CITY DISTRICT PLAN

**PROPOSED DISTRICT PLAN CHANGE 9**

**BRAESIDE RESIDENTIAL 6 ZONE**

Plan Change Documentation



**DUNEDIN CITY**  
**COUNCIL**  
Kaunihera-a-rohe o Otago  
**CITY PLANNING**

## 8.12 RESIDENTIAL 6 ZONE - RULES

### Rule 8.12.1 Permitted Activities

The following activities are permitted activities provided that they comply with the conditions in Rule 8.12.2 of the Residential 6 Zone:

(i) Residential Activity in:

(e) ~~Braeside at a density of not less than 5000 m<sup>2</sup> of site area per residential unit, provided that there shall be a maximum number of 24 allotments and as shown as Lots 1-24 in the Concept Plan in Appendix 8.4, and that only one residential unit may be established on each site. [Amended by C199/2000, 12 & 18/12/00]~~

### Rule 8.12.2 Conditions Attaching to Permitted Activities

(xi) Minimum Site

(a) Minimum Area for Front and Rear Sites (excluding the access strip)

(v) ~~Braeside 5000 m<sup>2</sup>; provided there shall be no more than 24 allotments within the zone, as shown in the Concept Plan in Appendix 8.4 and only one residential unit per lot. [Amended by C199/2000]~~



**LOTS 1-24 BRAESIDE RESIDENTIAL 6 ZONE CONCEPT PLAN IN APPENDIX 8.4**