

HEARINGS COMMITTEE AGENDA

TUESDAY, 2 AUGUST 2022, 11.00 AM
Edinburgh Room, Municipal Chambers

MEMBERSHIP: Commissioner Ros Day-Cleavin

IN ATTENDANCE: Phil Marshall (Senior Planner/Committee Advisor), Robert Buxton (Consultant Planner), Elizabeth Schonwald (Parks and Recreation Planner) and Wendy Collard (Governance Support Officer)

PART A (Committee has the power to decide these matters):

1 RESOURCE CONSENT APPLICATION – SUB-2021-252 and LUC-2021-639, 7, 7A, 9 and 9A Brighton Road, Green Island

Introduction

Applicant to introduce themselves and their team.

Procedural Issues

Any procedural matters to be raised.

Presentation of the Planner's Report

Report from

Refer to pages 1 - 10

The Applicant's Presentation

Application

Refer to pages 11 - 60

Council Officer's Evidence

- Memorandum from Parks and Recreation Planner
Refer to pages 61 – 66

The Planner's Review of their Recommendation

The Planner reviews their recommendation with consideration to the evidence presented

The Applicant's Response

The Applicant to present their right of reply

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

“That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	Resource Consent application – 7, 7A, 9 and 9A Brighton Road, Green Island	That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.	Section 48(1)(d)

TO: Consent Hearings Commissioner

FROM: Robert Buxton, Buxton & Walker Limited
Consultant Planner

DATE: 19 July 2022

SUBJECT: RESOURCE CONSENT APPLICATION: SUB-2021-252 LUC-2021-639
ESPLANADE WAIVER/REDUCTION CONSIDERATION
7, 7A and 9, 9A Brighton Road, Green Island, DUNEDIN

APPLICANT: J R J and S T Clearwater Trustees Limited and Dunedin City Council

Note the following sections on “Description of activity” and “Planning provisions”, including the subdivision and land use aspects, are given in full for completeness. However, it is only the esplanade waiver/reduction that is being considered in this hearing.

DESCRIPTION OF ACTIVITY

The application seeks consent to subdivide off part of Dunedin City Council (DCC) land that is zoned **Recreation** to dispose of it to J R J and S T Clearwater Trustees Limited (the Clearwater’s) who own adjacent **Industrial** zoned property to the north occupied by Clearwater Civil, a civil earthworks and construction contractor. It appears Clearwater Civil encroach upon the DCC land with its industrial activities without legal authorisation, which is a legacy from the previous owner. Clearwater Civil’s industrial use include activities associated with a civil earthworks and construction contractor depot including hardstand and part of a workshop and stockpiling. Land use consent is also sought to legalise these activities.

Proposed Lot 1, the 890m² strip of land which would be disposed of, lies on the true right of Kaikorai Stream and borders 7 and 7A Brighton Road both owned by the Clearwater’s (the Clearwater land). Proposed Lot 1 would be amalgamated with 7 Brighton Road. The balance - proposed Lot 2 of 8860m² would be held in a common title with the remaining allotments of the DCC land (9 and 9A Brighton Road).

The DCC land is held in two separate titles with a total area of approximately 12.4 ha. The two titles are disjointed, with one title (OT16D/1193, 6.0392ha) generally being land well away from the proposed subdivision except for a closed road parcel that cuts through the other title (OT16D/1194, 6.3671ha). This closed road parcel can be seen on the scheme plan, immediately to the west of the existing workshop. No part of the DCC land is classified Reserve under the Reserves Act 1977. Kaikorai Stream, a modified watercourse, flows through the DCC land towards the Kaikorai Estuary.

Shand Park is situated at the eastern end of the DCC land (directly across Kaikorai Stream from proposed Lot 1) and is used as a dog exercise area. At the western end of the DCC land is Kaikorai Estuary, a wetland/estuarine area, and to the south is the DCC Green Island Landfill. The first 300m of the vehicle access to the landfill is over the DCC land that is part of this subdivision.

The proposed scheme plan overlain over an aerial shows:

- the new boundary between proposed Lot 1 and Lot 2 will run along a relatively new fence. It is understood that the fence was erected by Clearwater Civil following discussion with DCC Green Island Landfill staff due to dogs from the nearby dog exercise area at Shand Park crossing the stream.
- there is an existing “concrete barrier” that would remain on proposed Lot 2, located approximately 1 m from the new boundary. The length of the barrier is not shown on the

scheme plan but is estimated to be 30m in length. From the site visit, the barrier does not appear to have been engineer-designed and the river is undercutting the bank below the concrete barrier.

- some of the hardstand area and a slither of an existing workshop are located on the DCC land currently.
- access shown as from 'A' to 'B' for DCC maintenance vehicles is to be provided through the Clearwater land and proposed Lot 1 to be secured by way of covenant.
- two planting areas are proposed. Planting Area A of approximately 1260m² as shown on the updated plan Sheet 3 Rev A dated 12/11/2021 which shows planting on the true right from the western boundary of Pt Sec 99 through to the eastern boundary with Brighton Road, and planting Area B of approximately 560m² on St Peter Chanel Reserve on the other side of Brighton Road to the east (both sides of the stream).

Earlier indicative comments by Angus Robertson, Parks and Recreation Planner, to the applicant 4 June 2021, stated that it is unlikely that the stream portion along proposed Lot 1 would benefit from provision for public access. Therefore, any esplanade reserve in this area would primarily focus on affording some ecological protection to the stream and its margins, rather than for recreation value. The indicative comments, including the proposed additional riparian planting to the east and west of proposed Lot 1 were used as a basis for the application.

The applicant has sought resource consent to reduce the esplanade requirements of the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). As Council Staff do not have delegation to approve this, the matter has been referred to the Consent Hearings Commissioner for a decision.

PLANNING PROVISIONS

The site is subject to the following provisions in terms of the Proposed 2GP.

The DCC land is zoned **Recreation** and is subject to the following overlays/mapping:

- Kaikorai Estuary Urban Biodiversity Mapped Area UBMA04, which covers most of the site, although it appears that proposed Lot 1 may lie just outside of this overlay.
- Hazard 2 (flood) Overlay Zone, which covers most of the site including all of proposed Lot 1. Risk moderate – Kaikorai Stream.
- Esplanade Reserves and Strip Mapped Area, which covers Kaikorai Stream – marked as Reserve – 20 metre requirement.
- C106 – Area of Significant Biodiversity Value, Edge of Kaikorai Estuary – estuary and lagoon – regional significance [other protection status – Wetlands of Ecological and Representative Importance database - regional significance]. This area is outside of proposed Lots 1 and 2.
- Archaeological Alert Layer, which covers the bulk of OT16D/1193, well away from the proposed Lots 1 and 2.

The DCC land is also subject to a designation D658 notated on the planning map on this site, the requiring authority being DCC, for the purpose of Green Island Landfill - Landfilling and Associated Refuse Processing Operations and Activities. The Green Island Landfill is presently located to the south of the property. Approval from the requiring authority is considered to be implicit in the application.

The Clearwater land is zoned **Industrial** and is subject to the following overlay:

- Hazard 2 (flood) Overlay Zone, in entirety. Risk moderate – Kaikorai Stream.

Subdivision

Under the Proposed 2GP subdivision activities along the bank of the Kaikorai Stream must provide an esplanade reserve with a minimum width of 20 metres – Rule 10.3.1.1.b. So in terms of the area that is determined to be the 'subdivision site', notwithstanding that DCC is the current landowner, a 20 m esplanade reserve on either side of the stream is required to vest in DCC as local purpose (esplanade) reserve under the Reserves Act 1977 and the river bed to vest in the Crown. Taking the full 20m wide esplanade reserve adjacent to the Clearwater land would mean that proposed Lot 1 could not be created as the esplanade

reserve would encompass all of that proposed allotment (it is estimated from the scheme plan that proposed Lot 1 varies between approximately 5 and 10m in width). In the area adjacent to proposed Lot 1 the scheme plan shows approximately 1-2 m width between the top of the bank and the new boundary of proposed Lot 1 presumably to vest in DCC as esplanade reserve.

Under Rule 20.3.5, subdivision in the Recreation zone is a **restricted discretionary** activity, noting that there is no minimum lot size. The subdivision will not meet performance standards in Rules 20.7.2 Esplanade Reserves and Strips (which must comply with Rule 10.3.1 which as noted requires an esplanade reserve with a minimum width of 20 metres), and 20.7.5.1 Shape which states that resultant sites must be of a size and shape that is large enough to allow for the esplanade reserve, and infringing these rules is also a **restricted discretionary** activity. Given that proposed Lot 1 will be amalgamated with 7 Brighton Road, Rule 20.7.1 Access, 20.7.3 Firefighting and 20.7.4 Service connections will not be relevant. Matters that discretion is restricted to include:

- Positive effects on biodiversity values or the natural character of the coast (Rule 10.5.3.1.a)
- Effects on biodiversity values and natural character of riparian margins and the coast (Rules 10.5.3.2.a, 10.6.3.5.a, 20.9.5.2.a and 20.10.4.1.d);
- Effects on public access (Rules 10.5.3.2.b, 10.6.3.5.b, 20.9.5.2.b and 20.10.4.1.e);
- Effects on the efficient and effective operation of the recreation area (Rule 20.10.4.1.a);
- Effects on the safety and efficiency of the transport network (Rule 20.10.4.1.b);
- Effects on health and safety (Rule 20.10.4.1.c, proposed to be deleted in Variation 2);
- Risk from natural hazards (Rules 20.10.4.1.f and 20.10.5.1.a); and

The subdivision will also require consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) as a **discretionary** activity due to proposed Lot 1 being a HAIL site (Item F8 -transport depots or yards including areas used for refuelling or the bulk storage of hazardous substances) and that the applicant has not provided a Preliminary Site Investigation or Detailed Site Investigation report. The application states that as there will be no practical change to the existing situation the proposal poses no risk to human health.

Overall the subdivision activity would be a **discretionary** activity due to the NES-CS.

Land Use

Land use consent will also be required to authorise the industrial activity in the Recreation zone, which is a **non-complying** activity pursuant to Rule 20.3.3.21. Rule 20.4.3 requires public notification if the recreation zone is to be used for industrial use unless special circumstances exist. The applicant considers that the proposal is simply a boundary adjustment around established uses and that special circumstances exist. Additionally Rule 20.3.6.2 lists natural hazards potentially sensitive activities (which includes industrial activities) in the Hazard 2 (flood) overlay zone as **restricted discretionary** activities.

Overall the land use activity would be a **non-complying** activity.

Other documents

Kaikorai Estuary is also protected under the Otago Regional Plan: Water (RPW); it is identified (as "Kaikorai LagoonSwamp") in Schedule 9 as a Regionally Significant Wetland (no. 68, map F57).

Kaikorai Stream (Kaikare awa) is noted under Schedule 1D of the RPW as holding values for Kāi Tahu.

The ORC Natural Hazards database identifies the Clearwater land and DCC land as having moderate to high liquefaction potential.

Stantec - Council's consultant engineer, has identified the following hazards:

- "From the Hazard Register, street files, and previously sent emails; for both this title and nearby properties*
- *Hazard ID 10106: Land Stability – Land Movement (Alluvial Fans – active floodwater dominated)*
 - *Hazard ID 11407: Liquefaction (Domain C)*
 - *Hazard ID 11581: Flood – Waterway (Kaikorai Stream Floodplain)*

- Hazard ID 12074: Flood – Overland Flow Path (Kaikorai Valley Flood Level including 500mm freeboard)”

ESPLANADE RESERVES – RELEVANT STATUTORY PROVISIONS

Resource Management Act 1991 (RMA)

Sections 77 and 230 of the RMA allows for the variation of the width of esplanade reserves, either in the district plan or by resource consent. In considering this request, Council is required to have regard to the matters set out in Section 229 of the RMA.

Section 229 of the RMA identifies the purposes for which the esplanade reserves or strips can be taken. The reserve or strip can have one or more of the following purposes.

- (a) *To contribute to the protection of conservation values by, in particular:*
 - (i) *Maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - (ii) *Maintaining or enhancing water quality; or*
 - (iii) *Maintaining or enhancing aquatic habitats; or*
 - (iv) *Protecting the natural values associated with the strip or reserve; or*
 - (v) *Mitigating natural hazards; or*
- (b) *To enable public access to or along any sea, river, or lake; or*
- (c) *To enable public recreation use of the strip or reserve and adjacent sea, river or lake, where the use is compatible with the conservation values.*

Proposed 2GP

The matters of discretion referred to above under Proposed 2GP rules in relation to esplanade reserves are helpful and are addressed below under the assessment:

- *Positive effects on biodiversity values or the natural character of the coast*
- *Effects on biodiversity values and natural character values of riparian margins and the coast*
- *Effects on public access*

The Proposed 2GP lists the following guidance (Rule 10.5.3.2):

In assessing a change or reduction to the required esplanade reserve or esplanade strip, Council will consider relevant objectives and policies, the most relevant with regard to biodiversity and natural character being the following (Rule 10.5.3.2.a):

Objective 10.2.2. The biodiversity values and natural character of the coast and riparian margins are maintained and enhanced (note this objective is subject to appeal); and

Policy 10.2.2.7 Only allow subdivision activities adjacent to water bodies and the coast where the subdivision is designed to ensure that the following biodiversity values and natural character values are maintained or enhanced, including through provision of an esplanade reserve or esplanade strip in identified locations:

- a. *biodiversity values of riparian margins and the coast;*
- b. *the water quality and aquatic habitats of the water body or coast; and*
- c. *the natural functioning of the adjacent sea or water body.*

And in relation to public access(Rule 10.5.3.2.b):

Objective 10.2.4 Subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai; and

Policy 10.2.4.3 public access to the natural environment is enhanced.

General assessment guidance:

- *the effects on the values of the water body as identified in Appendix 10C;*
- *the effects on the natural functioning of the water body;*
- *the effects on other biodiversity values and natural character values; and*
- *any other measures proposed to enhance the biodiversity of the riparian or coastal margin and associated water body.*
- *the effects on public recreation and access values as identified in Appendix 10C;*
- *any relevant circumstances listed in the New Zealand Coastal Policy Statement 2010 or the Regional Policy Statement for Otago that may support restriction of public access; and*
- *the potential effects of sea level rise on the future level of the mean high water springs, and thus the width of the reserve.*

The Proposed 2GP also provides the following additional guidance in relation to public access (this provision is subject to appeal):

- *Potential circumstances that may support a consent application include:*
 - *Other opportunities to enhance public access are created by the subdivision.*
 - *The design of the subdivision takes advantage of adjacent unformed legal roads to provide public access.*
 - *Restricting access is necessary to protect public health and safety.*

PARKS AND RECREATION PLANNING COMMENTS

The application for a waiver/reduction (via resource consent) for an esplanade reserve has been reviewed by Council's Parks and Recreation Planner, from Council's Parks and Recreation Team (PARS) and her comments take account of input from the PARS Biodiversity Officer.

In summary the PARS Biodiversity Officer advised that if 20 metres is impractical at least a width of 10 m is required for biodiversity management and to protect the stream from potential effects of an industrial activity occurring adjacent the waterway. A 10 m width would be acceptable if the esplanade strip is extended lengthwise as a trade-off for a narrower esplanade reserve. There is reluctance to accept a further reduction of width to 5 m (which would be the absolute minimum width to have any value). Such a strip will help to protect ecological values of the stream but adds little value beyond that. A dense vegetative planting plan will be required for such a narrow buffer containing species such as flax and cabbage tree.

The Parks and Recreation Planner has reviewed the proposal and advised the following:

- The conservation values identified for Kaikorai Stream in Appendix 10C of the Dunedin City Council's Second Generation District Plan (2GP) are *"Mitigating flooding and erosion. Lower reaches have tidal influence and high conservation value."*
- The Kaikorai Estuary is within the site and is protected under the Proposed 2GP with the following overlay maps:
 - Kaikorai Estuary Urban Biodiversity Management Area (UBMA04).
 - Area of Significant Biodiversity Value, Edge of Kaikorai Estuary, Estuary and Lagoon (C106).
- The Kaikorai Estuary is also protected under the Otago Regional Plan: Water (RPW). It is identified as "Kaikorai Lagoon Swamp" in schedule 9 as a Regionally Significant Wetland. Kaikorai Stream (Kaikara awa) is noted under Schedule 1D of the RPW as holding values.
- The Kaikorai Stream has a total catchment area of 55.4km² and is approximately 14.5km long flowing from Kaikorai Valley to the Pacific Ocean. The lower catchment of the stream prior to the entry to Kaikorai Estuary is within the site and it has poor water quality. The Kaikorai Stream flows through both residential and industrial areas, the water quality is compromised by the many stormwater outfalls that discharge into the stream.
- It is because of Kaikorai Stream's poor health and the significance of the Kaikorai Estuary that PARS wishes to see an esplanade strip provided to help to support and improve the health of the stream by

increasing riparian planting along the banks of the stream and providing some ecological protection to the stream

The Parks and Recreation Planner has made the following suggestions to mediate the reduction in the esplanade width:

1. The applicant/property owner manages and treats all stormwater on site to prevent contaminated water from the site entering the stream.
2. No vehicle or equipment servicing; and storage or disposal of contaminants, e.g. diesel fuels, oils, etc to occur within 20m of the northern bank of the stream.
3. The provision of a 5m wide esplanade strip on the northern bank of the stream across the entire site being subdivided, this strip would be for the purpose of improving biodiversity and conservation values and not to provide public access. There would be an expectation that the applicant would plant from the stream edge up to the fence line with appropriate native species. A planting plan to be provided to PARS for approval first. The 5m width would take the strip beyond the fence, there would be an expectation with time or a future property sale this fence would be moved to be consistent with the esplanade strip's northern boundary and the rest of the esplanade strip be planted consistent with the approved planting plan.
4. The provision of a 15m wide esplanade strip along the southern bank of Kaikorai Stream within the site for the purpose of biodiversity, conservation, and public access.

The Parks and Recreation Planner prefers an esplanade strip over an esplanade reserve, it appears due to concerns about the risk of the stream undercutting the bank.

The comments from the Parks and Recreation Planner are premised on public access not being required along the bank beside proposed Lot 1.

The applicant has viewed the suggestions of the Parks and Recreation Planner and responded to each point as follows:

1. They agree to managing stormwater on the site.
2. They do not agree to no servicing of vehicles or storage of contaminants within 20m of the northern bank of the stream. They consider point 1 would address any concerns.
3. They do not agree to any increase of the proposed esplanade reserve beyond the existing fence, as it would limit land use and negatively impact land value. They consider the planting of an area equivalent to a 20m esplanade reserve is an acceptable offsetting proposition that provides a better outcome in terms of biodiversity and public amenity. They do not agree to using an esplanade strip rather than an esplanade reserve.
4. They accept providing a 15m esplanade strip elsewhere within the 'site' as suggested provided the 'site' is confined to Lot 2, and not the total extent of the titles being subdivided.

ASSESSMENT OF WAIVING ESPLANADE RESERVE REQUIREMENTS

History of use of proposed Lot 1

The application states that "... industrial activities have been undertaken on it [industrial strip located on DCC land] since at least 2007 and were initiated by a previous owner. They have since undertaken remedial work on the industrial strip (including removing rubbish and resurfacing), which was left in a poor state by the previous owner of the Clearwater land. More recently, they have installed a fence along the southern edge of the industrial strip (the top of the stream bank)." The application also states that Clearwater Civil has undertaken some weed control (including the removal of large willows) and planting of native flaxes along the industrial strip's riparian margin. It is also noted that the Clearwater's enquired about leasing the industrial strip from the DCC in 2015.

Assessment

Positive effects on biodiversity values or the natural character of the coast (10.5.3.1.a)

Effects on biodiversity values and natural character values of riparian margins and the coast (10.5.3.2.a)

Effects on public access (10.5.3.2.b)

It should firstly be noted that the existing industrial use of the DCC land has not been proven to be lawfully established and, as such, it has no existing use rights in terms of the RMA. Therefore the presence of the industrial activity and recently established fence which proposed Lot 1 is based on should be disregarded.

I note that a plan for a shed on the boundary dated 30.6.92 identifies that “all areas outside of boundary to be finished to smooth, even surface and topsoiled and regrassed” (scanned page 47/204 of HAIL-2021-244).

I also note that an application dated 5 May 2019 for resource consent (LUC-2019-233) for “outdoor storage (Stockpile material) and for general activities associated with an industrial site (contractors yard including parking of machinery)” at 7A Brighton Road, noted that the site did not have existing use rights (paragraph 14 scanned page 113/204 of HAIL-2021-244). It is also noted in that application that the UBMA of the Proposed 2GP was not associated with the subject site (paragraph 23 scanned page 114/204 of HAIL-2021-244). Also in the decision for LUC-2019-233 it is stated in the description of the activity that “... *the applicant seeks retrospective resource consent to use the subject site for outdoor storage, being to stockpile material auxiliary to the industrial activity occurring on the neighbouring site at 7 Brighton Road. It is noted that the applicant’s storage activity has also encroached onto the adjoining Council land at 9A Brighton Road, but consent is not sought for this encroachment and this occupation is expected to cease.*” (scanned page 122/204 of HAIL-2021-244).

The presumption of the RMA, and the clear direction in the 2GP is to vest a 20 m esplanade reserve along Kaikorai Stream. The benefits of esplanade areas are well known and are highlighted in the RMA under s6 as matters of national importance, and the purposes of esplanade reserves and strips under s229. In this case the land is in the ownership of DCC, and is already significantly less than 20m. This proposal removes future opportunities to enhance the riparian margin and biodiversity values. Vesting of an esplanade reserve in the DCC in the vicinity of proposed Lot 1, of approximately 1-2 m width, would limit the opportunity afforded by a larger width to establish a robust ecological habitat to assist with enhancing the values of the waterbody, and its natural functioning, and to establish a corridor for fauna and flora. A 1-2m width is also very difficult to enhance and maintain, and if the full width is planted it will be difficult to access along its length.

The PARS Biodiversity Officer’s preference, should it be impractical to have a 20m wide esplanade, is to have a 10m wide esplanade in the location of proposed Lot 1 to ensure opportunities for on-going protection of ecological values and riparian margins – such a reduction being based on the planting of indigenous species elsewhere along the stream. The PARS Biodiversity Officer advised he would reluctantly accept a 5m wide esplanade reserve, with dense planting of indigenous species. As proposed Lot 1 appears to range in width from 5m-10m, vesting of reserve of 10m width would make the proposal unviable; and vesting a 5m wide esplanade reserve would still impact upon the area of proposed Lot 1 and may mean that there are parts where the width of proposed Lot 1 would be 1 m or less.

The applicant marking out 5 m and 10 m setbacks from the streambank on the scheme plan overlain with the aerial photograph would be helpful (as would marking on site if the decision makers undertake a site visit).

The applicant has not specifically addressed PARS Biodiversity Officer’s comments or supplied evidence from an ecologist with regard to what would be an appropriate width of riparian planting for biodiversity and conservation values along the length of the stream beside the applicant’s existing industrial sites.

The applicant has proposed planting of indigenous species along the stream as shown on the updated scheme plan, to compensate for the loss of the area of proposed Lot 1. They seek that instead of providing a planting plan at this stage, the approval of a planting plan by PARS is made a condition of approval. The application also refers to weed clearance and maintenance as part of the proposal.

Planting of indigenous species and weed control elsewhere along the stream is beneficial particularly if provided for by the applicant. However, conservation planting has already been occurring in the vicinity. This proposal takes proposed Lot 1 out of the riparian margin and removes all the benefits that the current ownership confers in terms of opportunities to enhance the riparian margin and biodiversity values in the future. The ability to take an esplanade reserve is something that is for the long term, giving options not just currently but for future generations.

Proposed Lot 1 is zoned Recreation, which reflects its open space values and is consistent with avoiding industrial activities and buildings close to streams and riparian habitat. Proposed Lot 1 is also an identified HAIL site. The applicant states that no change in what is currently occurring on the site is applied for and that the risk to human health is therefore nil. I note that there is no critical operational need to locate industrial activity at this site, and the activity has no existing use rights and is not lawfully established. Allowing this allotment to be created (and to formalise its current use) provides an opportunity and rationale for an applicant to make applications for further industrial development or rezoning of proposed Lot 1 in the future (albeit that it will remain as zoned for Recreation at this point).

I accept in this case that public access is not required in the area of proposed Lot 1 given that there is adequate access from the remainder of the DCC land to and along the true right bank of the stream. This accords with the view of PARS staff recorded above.

The conservation values of the stream listed under Appendix 10.C include “Mitigating flooding and erosion”. The proposal does not support these values. Proposed Lot 1 is subject to flooding and liquefaction (as per identified hazards above). Stantec recommends that the application not be declined on the basis of known natural hazards, however, at the time of making those recommendations Stantec were not aware of the undercutting of the bank by the stream (including below the concrete barrier) which became apparent following a site visit. The applicant did not wish the application to be referred back to Stantec nor provide a report by an engineer with respect to the vulnerability of the bank to erosion. Therefore, the vulnerability of the bank beside proposed Lot 1 is unknown and could potentially lead to liabilities for the DCC (or the Crown if the bank eroded and/or the concrete barrier collapsed).

Esplanade Strip

Although the applicant has advised that an esplanade strip over proposed Lot 1 is not supported, the following comments are made.

As noted above, if a reduction is to occur PARS expressed a preference for an esplanade strip, and has suggested a 5m biodiversity esplanade strip over proposed Lot 1 and along the true right bank, and a 15m biodiversity and access esplanade strip over the true left bank. The suggestion is that for the interim, the existing fence could remain and the land between the fence and the stream bank be planted, but with the option to plant the 5m strip at a later date or on the sale of the land.

A strip would have the benefit of moving with the bank if erosion occurred. Under the Proposed 2GP where there is an esplanade reserve requirement Council may instead require a strip where it considered that management of the land will achieve positive results for biodiversity and natural character values (Assessment Guidance 10.5.3.2.vi). In this case, the creation of the proposed Lot 1 was for disposal of the property to the private purchaser, the Clearwater’s. For an esplanade strip, the allotment should be created from the bank of the stream over which an esplanade strip would move (rather than over a 1-2 m width of DCC land and then private property— for although it is understood dual esplanade reserve strips side by side can be created it is unnecessary and cumbersome). Presumably the scheme plan would also have to be amended to show proposed Lot 1 being split into two lots each bordering 7 or 7A Brighton Road with each proposed lot amalgamated with the adjoining parcel to allow for the strip to potentially move into either 7 or 7A Brighton Road.

One disadvantage of an esplanade strip is that for future subdivision of the sites, the top-up provisions for esplanade reserves (s236 of the RMA) may not apply.

Council Assets

Council 3 Water’s Foul Sewer Pumping Station is located within 9A Brighton Road (close to Brighton Road) and would lie within proposed Lot 1. Either an easement in gross in favour of Council is required over proposed Lot 1 for the pump station (easement to be a rectangular shape and 1.5m away from any structure of the pump station (roughly 5x6m) and any associated pipes; or the scheme plan amended to exclude this area from proposed Lot 1 and to remain Council land.

CONCLUDING REMARKS

Council in this instance already owns the land by the stream, although none of it is held as local purpose reserve (esplanade) under the Reserves Act.

The subdivision triggers taking of an esplanade reserve of not less than 20 m in width on both sides of Kaikorai Stream. The applicant has applied to a waiver/reduce the esplanade reserve where it adjoins proposed Lot 1 to approximately 1-2 m.

I consider that in general a full esplanade reserve is required to meet Section 229 of the RMA and the relevant provisions of the Proposed 2GP, and that the application to waiver/reduce the esplanade reserve should be refused given that the existing Council owned land between the applicant's sites and the stream bank is already significantly less than 20m in width. The consequence is that the subdivision will not be able to proceed and the land will remain in DCC ownership. Although I have sympathy for the Clearwater's given that they have undertaken work in discussion with DCC staff to improve the area that had been occupied by the previous owner of their land, they have also enjoyed benefits of using this land.

I note there have been a number of applications upstream on the Kaikorai Stream where reductions have been granted, resulting in esplanade reserves ranging in widths from 3.5m to 15m width. However, in those situations it appears account has been taken of existing legally established industrial activities or built structures, on Industrial zoned land.

The applicant may wish to amend the subdivision and land use application to provide for the footprint and eaves of the workshop (which partly encroaches) as an allotment to be amalgamated with 7A Brighton Road. I would support such an application, and its associated reduction in esplanade reserve as it is a small area and otherwise this portion of the workshop would have to be removed or a lease arranged. I also note that although the existing building does not meet the setbacks for either the Industrial or Recreational zones, these setbacks only apply to new buildings.

Should the Consent Hearings Commissioner form a different opinion and wish to approve the request by the applicant to reduce the esplanade reserve with respect to all of proposed Lot 1, then I recommend with respect to the remainder of the DCC land within the 'subdivision site' that, unless there is good reason for a reduction, a 20m width esplanade reserve should be taken. Conditions associated with the recommendation to reduce the esplanade reserve (to be included in any subsequent subdivision and land use consents) should include:

- a. the applicant consult with PARS prior to preparing and submitting for approval by Council's Resource Consent Manager and Council's Parks and Recreation Planner a weed control and revegetation plan to be prepared and implemented by a suitably qualified person/s specifying native species (locally sourced), pb sizing, the number of plants and plant spacing, staging, and maintenance programme (methodology, and frequency) and length of maintenance to be undertaken, to be established in the planting areas specified on the updated scheme plan that are equivalent to the reduction in the esplanade reserve.
- b. the weed control and revegetation plan to be actioned prior to the s224 certification of the subdivision.

Note any subsequent subdivision consent will also need to require an easement in gross in favour of Council over the pumping station and associated pipes be created, or the scheme plan is amended to exclude this area from proposed Lot 1 so it remains as DCC land.

RECOMMENDATION

That the application for resource consent to reduce/waiver the esplanade reserve requirement along Kaikorai Stream be **refused**.

I would, however, recommend a very minor reduction in the esplanade reserve and minor boundary adjustment to bring the existing building that appears to be slightly over the boundary to be contained within the applicant's site.

Report prepared by:



Robert Buxton, Buxton & Walker Limited
Consultant Planner

19 July 2022

Date

Report checked by:



Phil Marshall
Senior Planner

19 July 2022

Date

Appendix One: Application.
Appendix Two: Staff memorandum.

APPLICATION

APPLICATION NUMBER:	SUB-2021-252
RELATED APPLICATIONS/LICENCES:	

PLANNING APPLICATION DETAILS FORM

Property Address		7 Brighton Road Green Island, 7A Brighton Road Green Island, 9A Brighton Road Green Island	
Property Description:		Property No: 5114757,5115881,5103594 Legal Description: SEC 185 BLK V SO 21817 LOWER KAIKORAI SD, LOT 1 DP 2282, SEC 25 SO 335606, SEC 26 SO 335606, SEC 24 SO 335606, LOT 1 DP 20826, PT SEC 100 BLK V SO 3 LOWER KAIKORAI SD, PT SEC 101 BLK V SO 3 LOWER KAIKORAI SD, PT SEC 99 BLK V SO 3 LOWER KAIKORAI SD, SEC 102 BLK V SO 3 LOWER KAIKORAI SD, SEC 103 BLK V SO 3 LOWER KAIKORAI SD, PT SEC 98 BLK V SO 3 LOWER KAIK...	
First Contact: (Applicant)	Name:	J R J and S T Clearwater Trustees Limited and Dunedin City Council 3 Waters	
	Mail Address:	C/O Paterson Pitts Group, PO Box 5933, Dunedin 9054	
	Contact Email:	vyvienne.evans@ppgroup.co.nz	
	Phone Number:	021 198 0716	
	Method of Service	Preferred Method - Email	
Second Contact: (Agent)	Name:		
	Mail Address:		
	Phone Number:		
	Contact Person:		
Description of Application:		Boundary adjustment subdivision and subdivision under the NESCS of land in RTs OT16D/1193 & OT16D/1194	
Application Type:		Subdivision Consent	
Fast Track?			
Consent Type:	Subdivision	Consent Nature	Boundary Adjustment Simple: only 2 sites involved
Major Category		Subdivision Category A	
Minor Category		Non-Notified - Restricted Discretionary	
Senior Planner or Responsible Officer:		Campbell Thomson	
Lodgement Date:		29 October 2021	Lodgement Officer: Hanneri Wilkie
Amount Paid:	\$2,400.00	Invoice Number:	893130
Waived: ☐			
Application Requirements	Signed Application Form		Copy of Title
	Locality Plan		Site Plan
	Plans and Elevations		AEE
	Affected Persons Consent		

Counter Comments:

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29 October 2021

City Planning
Dunedin City Council
PO Box 5045
Dunedin 9054

Attn: The Senior Planner

RESOURCE CONSENT APPLICATION (SUBDIVISION)

7 Brighton Rd, Green Island, Dunedin

On behalf of our client, we submit for consideration by the Dunedin City Council (DCC) a resource consent application prepared in accordance with sch 4 of the Resource Management Act 1991 (RMA). The following supporting documents are attached:

- Form 9
- Records of Title 461127, 523445, OT16D/1193 and OT16D/1194
- Subdivision scheme plan
- HAIL assessment report
- Memorandum from the DCC Parks and Recreation Services Planner dated 4 June 2021

For all correspondence on this matter, please note the contact details below:

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Wanaka 9305.
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1 THE SITE AND SURROUNDS

Three sites are the subject of this application: the land at 7, 7A and 9A Brighton Rd. Key aspects of these sites are described below and are illustrated by the subdivision scheme plan.

1.1 The Clearwater land

7 and 7A Brighton Rd (the Clearwater land) are owned by JDJ and ST Clearwater Trustees Ltd. (the Clearwaters).

- 7 Brighton Rd has an area of 2258 m² and is legally described as Sec 185 Blk V Lower Kaikorai SD and Lot 1 DP 2282. It is held in Record of Title 461127.
- 7A Brighton Rd has an area of 2287 m² 523445 and is legally described as Sec 24–26 SO 335606. It is held in Record of Title 523445.

We note that 7 Brighton Rd is shown on the DCC Rates Map and 2GP Planning Map but is not searchable.

The Clearwater land is industrial land and is occupied by Clearwater Civil, a civil earthworks and construction contractor. On 7 Brighton Rd there are two existing buildings, including a workshop, and an aboveground diesel tank that is used to refuel vehicles and equipment. Most of the site, including all of 7A Brighton Rd is used to store stockpile materials, vehicles and equipment.

The diesel tank was installed under land use consent LUC-2015-602, and the outdoor storage of stockpile materials associated on 7A Brighton Rd was authorised by land use consent LUC-2019-233.

1.2 9A Brighton Rd

9A Brighton Rd is owned by the Dunedin City Council. It has a total area of 12.4063 ha and comprises a number of allotments held in two records of title.

- Record of Title OT16D/1193 holds a 6.0392 ha area of land that is legally described as: Sec 120 and Pt Sec 53 Blk VII Dunedin and East Taieri SD; and Closed Road intersecting Sec 86, 87, 98, 102 and 103 Blk V Lower Kaikorai SD.
- Record of Title OT16D/1194 holds a 6.3671 ha area of land that is legally described as: Sec 103 and Pt Sec 85–87, 98 and 99–102 Blk V Lower Kaikorai SD.

We note that on the DCC Rates Map and 2GP Planning Map Sec 120 is not shown as part of 9A Brighton Rd, but is instead labelled as Sec 120 Main Rd Fairfield.

9A Brighton Rd is recreational land. At its eastern end is Shand Park (a dog exercise area) and at its western end is Kaikorai Estuary, a wetland/estuarine area. Kaikorai Stream passes through the site, flowing from its northeastern corner in a southwesterly direction until it reaches Kaikorai Estuary. This has resulted in a narrow strip along the site's northern boundary being separated from the rest of the site. Part of this strip adjoins the Clearwater land and is used by Clearwater Civil (the industrial strip); the industrial strip extends west as far as the western boundary of Pt Sec 99 and has an area of approximately 2000 m².

The attached HAIL assessment report includes a detailed discussion of the industrial strip's land use history. However, it is worth noting here that industrial activities have been undertaken on it since at least 2007 and were initiated by a previous owner. The Clearwaters enquired about leasing the industrial strip from the DCC in 2015. They have since undertaken remedial work on the industrial strip (including removing rubbish and resurfacing), which was left in a poor state by the previous

owner of the Clearwater land. More recently, they have installed a fence along the southern edge of the industrial strip (the top of the stream bank).

1.3 Surrounding Environment

The sites are located in Green Island. Their surrounding environment can be described as follows.

- **Industrial activities:** the Clearwater land is part of a small industrial area and is bounded by industrial land to the northeast. 9A Brighton Rd is bounded by industrial land to the south.
- **Transportation activities:** the sites are bounded by the Dunedin Southern Motorway (State Highway 1) to the north, although this is elevated and separated from the sites by a segregation strip. They are also bounded by Brighton Rd to the east. Both roads are Strategic Roads under the 2GP Road Classification Hierarchy.
- **Residential activities:** there is developed residential land on the eastern side of Brighton Rd.
- **Recreational activities:** on the eastern side of Brighton Rd, the riparian margins of Kaikorai Stream are within a DCC reserve. This is publicly accessible from Brighton Rd, opposite the Clearwater land.

1.4 Kaikorai Stream and Kaikorai Estuary

According to the 2GP Planning Map, the majority of 9A Brighton Rd is within the Kaikorai Estuary Urban Biodiversity Mapped Area (UBMA), which covers Kaikorai Stream as far east as Brighton Rd. The current state and values of Kaikorai Stream and the Kaikorai Estuary UBMA are therefore relevant.

Kaikorai Stream

The most recent information on Kaikorai Stream is provided by the Otago Regional Council's (ORC) State of the Environment report on surface water quality in Otago from 2006–2017¹. From its headwaters in the Kaikorai Hills, Kaikorai Stream flows in a southwesterly direction for approximately 15 km down Kaikorai Valley and into Kaikorai Estuary, which discharges in the Pacific Ocean near Waldronville.

Kaikorai Stream has a total catchment area of 55 km², comprising the western flanks of Dunedin's main urban area as well as Green Island, Fairfield and Waldronville. In terms of land cover, the upper catchment contains some areas of productive rural land but is dominated by kanuka/manuka scrubland and indigenous forest. The lower catchment is mostly urban and industrial land.

Lower Kaikorai Stream (which includes the stretch that passes through 9A Brighton Rd) has some of the worst water quality in the Otago Region. In particular, it has very low Macroinvertebrate Community Index (MCI) scores; its median of 68 is well below the 'degraded' threshold of 80, reflecting an extremely degraded invertebrate community. This is likely due a combination of the following factors:

- absence of riffle/run habitat
- high algal stream bed cover (99% in 2017)
- discharge of stormwater and contaminants from industrial land

¹ Uytendaal A. & Ozanne R. (2018) State of the Environment: Surface Water Quality in Otago 2006–2017. Dunedin: Otago Regional Council.

The 2GP (Appendix A10C) identifies the conservation values of Kaikorai Stream as “mitigating flooding and erosion. Lower reaches have tidal influence and high conservation value.” These lower reaches are where the stream enters Kaikorai Estuary, rather than where it passes the Clearwater land. No public recreation and access values are identified.

Kaikorai Stream is not identified in Sch 1A of the Otago Regional Plan: Water (RPW) as having significant natural values.

Kaikorai Estuary UBMA

Appendix A10.4 of the 2GP describes the UBMA’s biodiversity values as follows:

“To the south of the motorway the UBMA comprises a contiguous strip of estuary on the true right of Kaikorai Stream extending to the east as far as Brighton Rd; this area has estuarine vegetation and rank grass with flax and toetoe on the higher points along the road edge...The indigenous estuary vegetation is largely saltmarsh ribbonwood [Plagianthus divaricatus] Carex secta and jointed wire rush [Apodasmia similis]. Much of the indigenous vegetation has been replaced by weedy exotic species, particularly cocksfoot, gorse and crack willow, which is now the dominant cover along this stretch of Kaikorai Stream.

The riparian strip along a bend of Kaikorai Stream on the east side Brighton Road is a mown area with some landscape plantings of natives.

On the immediate southern side of the motorway, significant indigenous vegetation remains, although in a degraded state. The habitat supports indigenous fauna; for example, spotted shag (Phalacrocorax punctatus).”

We note that Kaikorai Estuary is also protected under the RPW; it is identified (as “Kaikorai Lagoon Swamp”) in Sch 9 as a Regionally Significant Wetland (no. 68, map F57).

Kaikorai Estuary has been the subject of restoration efforts coordinated by the Dunedin Environment Centre Trust from 2010–2018. This has involved both weed control and planting indigenous vegetation. Additionally, Clearwater Civil has undertaken some weed control (including the removal of large willows) and planting of native flaxes along the industrial strip’s riparian margin.

2 THE PROPOSAL

The applicant (JRJ and ST Clearwater Trustees Ltd. and DCC) proposes to subdivide a 9750 m² portion of 9A Brighton Rd into two fee simple allotments.

- Lot 1 will be an 890 m² portion of the industrial strip.
- Lot 2 will be the remaining 8860 m².

In legal effect, this subdivision will be an adjustment of the boundary the Clearwater land and 9A Brighton Rd; Lot 1 will be amalgamated with 7 Brighton Rd and held in Record of Title 461127, and Lot 2 will be held in a common title with the remaining allotments of Records of Title OT16D/1193 and OT16D/1194. As the subdivision scheme plan shows, the new boundary will follow the line of the existing fence on the industrial strip.

The proposal does have some complicating elements, which are discussed below. However, in essence it is simply a boundary adjustment intended to formalise the existing uses of the sites; Lot 2 is part of Shand Park and is used for recreation, but Lot 1 is functionally part of the Clearwater land

and is used for an industrial activity by Clearwater Civil. The proposal will result in an ownership arrangement that accurately reflects these uses. No changes to the extent or intensity of the existing industrial activity are proposed.

2.1 Legal matters

There are a number of interests recorded on the titles, but these are not relevant to the proposal. Nevertheless, there are several legal matters to address:

- First, while the subject site includes all the land held in Records of Title OT16D/1193 and OT16D/1194, the subdivision area comprises only part of 9A Brighton Rd. Consequently, the subdivision scheme plan defines only the allotments within the subdivision area: Pt Sec 85, 86, 98, and 102 and Pt Closed Road: The survey plan will do the same, although it still will refer to the unaffected allotments.
- Second, as mentioned above, following the proposed subdivision, Lot 1 will be transferred to the owner of 7 Brighton Rd (the Clearwaters) and held in Record of Title 461127.
- Third, a land covenant will be created to provide the DCC with access over the Clearwater land to Kaikorai Stream, its banks, and the land to the west of Lot 1. Typically, access would be provided by a right of way easement, but as use of Clearwater land will vary over time, defining a set access route is not appropriate, and a land covenant is proposed instead.
- Finally, we have enquired with the DCC, and as far as we are aware, 9A Brighton Rd is not a reserve under the Reserves Act 1977.

2.2 Natural hazards

The 2GP Planning Map shows that part of 9A Brighton Rd, including Lot 1, and all of the Clearwater land is within the Hazard 2 (flood) Overlay Zone due to its proximity to Kaikorai Stream.

Additionally, the ORC Natural Hazards Database identifies the sites as having moderate to high liquefaction potential.

2.3 Transportation

Both subject sites have frontage and legal access to Brighton Rd. The Clearwater land has physical access via an existing driveway on 7 Brighton Rd, and 9A Brighton Rd has physical access via walkways to Shand Park.

Lots 1 and 2 will have frontage and legal access to Brighton Rd via the frontages of the Clearwater land and 9A Brighton Rd, respectively. Ultimately, they will be accessed via the existing accessways to the subject sites; no changes to these accessways are proposed.

As mentioned above, a land covenant will provide the DCC with access over the Clearwater land; this will be between points 'A' and 'B' on the subdivision scheme plan.

Additionally, we note that as no changes are proposed to the existing activities on the subject sites, the proposal will not result in any change to parking and manoeuvring or traffic volume.

2.4 Infrastructure

9A Brighton Rd is recreation land, and the Clearwater land has existing service connections. No changes are proposed to the existing activities on the subject sites and therefore no additional infrastructure is required.

2.5 Esplanade reserve

The 2GP requires the proposal to include an esplanade reserve on the true right of Kaikorai Stream up to 20 m wide within the boundaries of Lot 1. We request that this requirement is waived, as to provide the full esplanade reserve Clearwater Civil would have to cease their use of Lot 1, and this would negate the purpose of the proposed boundary adjustment. We acknowledge that this will be decided through a (closed) hearing.

We sought advice from Parks and Recreation Services (PARS) on alternatives to the required esplanade reserve and received the attached memorandum from the PARS Planner dated 4 June 2021. The memorandum confirms that a reserve with a width of approximately 12–15 m and an area of approximately 1880 m² is required on the true right of Kaikorai Stream. The memorandum also made recommendations regarding what might make a reduced reserve acceptable to PARS.

We have developed a proposal for a reduced esplanade reserve based on the memorandum's recommendations:

- The proposed reserve will cover the area shown by Figure 2 of the memorandum (approximately 1840 m²). Compared to the required reserve, it represents a reduction of approximately 10–15 m in width and 40 m² in area.
- The proposed reserve will be longer than the required reserve: it will extend along the entire length of the industrial strip and, on the eastern side of Brighton Rd, for approximately 50 m along both sides of Kaikorai Stream.
- Creating the proposed reserve will involve removing existing weeds within the reserve area, planting indigenous species (according to a planting plan prepared by a suitably qualified person) and weed control to support the establishment of the new plantings.

We request that instead of providing a planting plan at this stage, the approval of a planting plan by PARS is made a condition of consent.

3 REASONS FOR APPLICATION

An assessment of the proposal against the relevant rules and regulations of the following documents referred to in s 104(1)(b) is carried out below:

- Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS); and
- the 2GP.

We note that no activities covered by the RPW are proposed.

3.1 NES-CS

The NES-CS applies when a person wants to do an activity described in any of regs 5(2)–(6) on a piece of land described in reg 5(7) or (8). The proposal involves the subdivision of recreation land.

The attached HAIL assessment report concludes that:

- Item F8 applies to all of the Clearwater land and the industrial strip.
- Item A17 only applies to the piece of land on 7 Brighton Rd containing the diesel tank; the tank's location is well-defined, and it is a modern, double-skinned tank situated on a concrete pad.
- Item G3 does not apply, as there is no evidence on landfilling activity on the Clearwater land or the industrial strip.
- It is more likely than not that no HAIL activities have been undertaken on the rest of 9A Brighton Rd.

Therefore, the only piece of land described by reg 5(7) within the subdivision area is Lot 1, to which only Item F8 applies. As no Preliminary Site Investigation (PSI) or Detailed Site Investigation (DSI) of Lot 1 exists, it is a piece of land to which the NES-CS applies, and the proposed subdivision is a **discretionary** activity under reg 11.

3.2 2GP

9A Brighton Rd is zoned Recreation and is subject to the following overlays:

- The Kaikorai Estuary UBMA, which covers most of the site
- The Haz2 (flood) Overlay Zone, which covers most of the site
- The Esplanade Reserves and Strip Mapped Area, which covers Kaikorai Stream

The Clearwater land is zoned Industrial and is subject to the following overlays:

- The Haz2 (flood) Overlay Zone, which covers the entirety of both site

Subdivision

The proposed subdivision falls within the definition of general subdivision. Rule 20.3.5.1 lists general subdivision as a **restricted discretionary** activity in industrial zones, provided it complies with the relevant performance standards. The proposed subdivision's compliance with the relevant performance standards is assessed in Table 1 below.

Table 1. Assessment of the proposed subdivision against the relevant performance standards.

Performance standard	Assessment
<i>Access</i> Rules 6.8.1 and 20.7.1	Complies. The resultant sites will have legal accessways as required by this performance standard.
<i>Esplanade reserves and strips</i> Rules 10.3.1 and 20.7.2	Does not comply. Rule 10.3.1.1.b.ii requires subdivision activities along the banks of Kaikorai Stream to provide an esplanade reserve with a minimum width of 20 m. In this case, an esplanade reserve is required on the true right of Kaikorai Stream, within the boundaries of Lot 1, which allows for a reserve with a width of approximately 12–15 m. We request a waiver of the esplanade reserve requirement for the proposed subdivision under ss 77 and 230 of the RMA. Under Rule 10.3.1.4 this aspect of the proposal is a restricted discretionary activity.

Firefighting Rules 9.3.3 and 20.7.3	Complies. Lot 1 will be within 135 m of multiple fire hydrants on Brighton Rd/Main South Rd, and will therefore comply with this performance standard. However, we note that no changes to the existing activity on this site are proposed. Lot 2 will be used solely as a reserve, so is exempt from this performance standard under Rule 9.3.3.1.a.
Service connections Rules 9.3.7 and 20.7.4	Complies. The Clearwater land has existing service connections, and Lot 1 will be served by these following its amalgamation with 7 Brighton Rd. Again, we note that no change to the existing activity is proposed. Lot 2 will be used solely as a reserve, so is exempt from this performance standard under Rule 9.3.7.2.b.
Shape Rule 20.7.5	Complies. The size and shape of Lot 1 meets the requirements of this performance standard. Lot 2 will be used solely as a reserve, so is exempt from this performance standard under Rule 20.7.5.4.

Overall, we consider the proposed subdivision to be a **restricted discretionary** activity.

Land use

The use of the Clearwater land and Lot 1 falls within the definition of industry, an activity in the industrial activities category. Industrial activities are classified in 2GP Table 11.1.3A as natural hazards potentially sensitive activities.

- Rule 20.3.3.21 lists the use of recreation land for industrial activities as a **non-complying** activity.
- Rule 20.3.6.2 lists natural hazards potentially sensitive activities (which includes industrial activities) in the Haz2 (flood) Overlay Zone as **restricted discretionary** activities.

Overall, we consider the proposed land use on Lot 1 to be a **non-complying** activity.

3.3 Overall activity status

In summary, the proposal involves general subdivision and industrial activities. It requires resource consent for the following reasons:

- subdividing a piece of land for which no PSI or DSI exists is a discretionary activity under the NESCS (cl 11)
- general subdivision is a restricted discretionary activity in recreation zones (Rule 20.3.5.1)
- the proposal contravenes the esplanade reserves and strips performance standard (Rules 10.3.1 and 20.7.2)
- industry is a non-complying activity in the Recreation zone (Rule 20.3.3.21)
- the use of land in the Haz2 (flood) Overlay Zone for natural hazards potentially sensitive activities is a restricted discretionary activity (Rule 20.3.6.2)

We consider the proposal's overall activity status to be **non-complying**.

4 ASSESSMENT OF ENVIRONMENTAL EFFECTS

Under s 104B, after considering an application for a discretionary or non-complying activity, a consent authority may grant or refuse consent; its consideration of the application is not restricted to specific matters.

Nevertheless, our assessment of environmental effects (AEE) for the proposal responds to the matters of discretion relevant to the proposal (outlined in Table 2 below) as well as the assessment guidance for industrial activities in the recreation zone (Rules 20.12.2.1 and 20.12.3.2).

Table 2. Matters of discretion relevant to the proposal.

Activity or performance standard contravention	Matters of discretion
Subdivision in a recreation zone	• Effects on the efficient and effective operation of the recreation area (Rule 20.10.4.1.a) • Effects on the safety and efficiency of the transport network (Rules 6.11.2.1, 6.11.2.7 and 20.10.4.1.b) • Effects on health and safety (Rules 9.6.2.5 and 20.10.4.1.c) • Effects on biodiversity values and natural character of riparian margins and the coast (Rules 10.6.2.1, 10.6.3.1, 10.6.3.5.a and 20.10.4.1.d) • Effects on public access (Rules 10.6.2.1, 10.6.3.5.b and 20.10.4.1.e); and • Risk from natural hazards (Rules 11.5 and 20.10.4.1.f).
Natural hazards potentially sensitive activities in the Haz2 (flood) Overlay Zone.	• Risk from natural hazards (Rules 11.5.2.1, 11.5.2.3 and 20.10.5.8)
Contravening the esplanade reserves and strips performance standard	• Effects on biodiversity values and natural character of riparian margins and the coast (Rules 10.6.2.1, 10.6.3.1, 10.6.3.5.a and 20.10.4.1.d) • Effects on public access (Rules 10.6.2.1, 10.6.3.5.b and 20.10.4.1.e)

4.1 Positive effects

The sites' existing ownership arrangement is inconvenient for the applicant, as it does not reflect their actual use. The path of Kaikorai Stream has created a strip of land with a shape that makes its use as a recreation area impractical. Consequently, it has been used for industrial activities since at least 2007 and is now functionally part of the Clearwater land. The proposal will resolve this problem by adjusting the boundary between 7 and 9A Brighton Rd so that it reflects the use of the sites.

4.2 Effects on the efficient and effective operation of the recreation area (Rule 20.10.4.1.a)

The proposal will result in Lot 1 becoming private land. However, as Lot 1 is already functionally private land, the proposal will not result in any practical changes in its use. In any case, Lot 1 has limited recreational value due to its shape and proximity to an industrial area.

The DCC will have access over the Clearwater land to the remaining portion of 9A Brighton Rd on the northern side of Kaikorai Stream. The operation of rest of the recreation area will be completely unaffected by the proposal.

The above points are also relevant regarding the effects of undertaking industry in the recreation zone. The proposal will not establish a new industrial activity on Lot 1, it seeks only to formally authorise an existing one. Additionally, Lot 1 is separated from the rest of Shand Park, and the remaining portion of 9A Brighton Rd on the northern side of Kaikorai Stream is not publicly accessible. The proposal will therefore not result in any practical change to the use of 9A Brighton Rd as a recreation area.

Overall, we consider the proposal's adverse effects on the efficient and effective operation of the recreation area to be **less than minor**.

4.3 Effects on the safety and efficiency of the transport network (Rules 6.11.2.1, 6.11.2.7 and 20.10.4.1.b)

Lot 1 is already functionally part of the Clearwater land, and no changes are proposed with respect to access, parking and manoeuvring or traffic volume. The DCC will continue to have access to the portion of 9A Brighton Rd on the northern side of Kaikorai Stream.

Overall, we consider the proposal's adverse effects on the safety and efficiency of the transport network to be **nil**.

4.4 Effects on health and safety (Rules 9.6.2.5 and 20.10.4.1.c)

The proposed subdivision is in legal effect a boundary adjustment and will not lead to any practical change in land use or development on the resultant sites. Therefore, it will not generate any additional infrastructure requirements and there will be no change from the existing situation regarding infrastructure.

Overall, we consider the proposal's adverse effects on health and safety to be **nil**.

4.5 Reduced esplanade reserve

As mentioned above in Section 2.5, to provide the required esplanade reserve Clearwater Civil would have to cease their existing use of Lot 1, and this would negate the purpose of the proposed boundary adjustment. For this reason, we believe that in this case a waiver of the esplanade reserve requirement is justified.

However, the applicant does not seek to completely avoid providing an esplanade reserve, and proposes a reduced esplanade reserve. This has been designed in accordance with the recommendations of the PARS Planner's memorandum, to offset the adverse effects of reserve's reduced width.

Under s 229 of the RMA, an esplanade reserve has 1 or more of the following purposes:

- (a) *to contribute to the protection of conservation values by, in particular, —*
 - i. *maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or*
 - ii. *maintaining or enhancing water quality; or*
 - iii. *maintaining or enhancing aquatic habitats; or*
 - iv. *protecting the natural values associated with the esplanade reserve or esplanade strip; or*
 - v. *mitigating natural hazards; or*
- (b) *to enable public access to or along any sea, river, or lake; or*
- (c) *to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.*

As Section 1.4 mentioned, the 2GP does not identify any public recreation and access values for Kaikorai Stream. Reflecting this, the PARS Planner’s memorandum states: “While parts of the Kaikorai Stream have some recreation value, any esplanade reserve in this area would primarily focus on affording some ecological protection to the stream and its margins, rather than for recreation value.

Section 1.4 also mentioned that although Kaikorai Estuary (and Kaikorai Stream where it enters the estuary) have high biodiversity value, most of Kaikorai Stream’s indigenous riparian vegetation is in a degraded state and has been replaced by weeds. This includes the riparian margins within the required esplanade reserve area. As the PARS Planner’s memorandum notes, while the existing flax plantings in this area have been done well, weeds such as willow and sycamore remain. Our site visits confirmed that much of the riparian vegetation along the required and proposed esplanade reserve area is rank grass.

The assessment of the effects of providing a reduced esplanade reserve takes these factors into account.

Effects on public access (Rules 10.6.2.1, 10.6.3.5.b and 20.10.4.1.e)

The following factors mitigate the adverse effects of the reduction in public access:

- The stretch of Kaikorai Stream beside Lot 1 has limited recreation value and is already publicly accessible from Shand Park.
- The stretch of Kaikorai Stream on the eastern side of Brighton Rd is within a recreation area, so is already publicly accessible.
- Lot 1 is already functionally private land, so there will be no practical reduction in public access to Kaikorai Stream compared to the existing situation.

Overall, we consider the adverse effects of the proposal on public access to be **less than minor**.

Positive effects on biodiversity values (Rule 10.5.3.1)

The proposed esplanade reserve will potentially result in the following positive effects along approximately 240 m of Kaikorai Stream:

- Weed control (including the removal of pest plant species such as willow and sycamore).
- A continuous (apart from where it is interrupted by Brighton Rd) strip of indigenous vegetation, providing habitat for indigenous fauna, improving habitat connectivity, and generally enhancing the natural character of the riparian margins.
- Shade for light control, helping to limit algal growth.
- Shade for temperature control, helping to ensure that stream temperatures are suitable for invertebrates and fish.
- Increased surface roughness, helping to filtering overland flow and prevent contaminants from entering the stream.
- Increased surface roughness, helping to slow water flow during flood events.
- Stream bank stabilisation, helping to reduce erosion.

Given the degraded state of the existing riparian vegetation and the water quality/aquatic habitat of Kaikorai Stream, the proposed esplanade we consider that the proposed esplanade reserve has the potential to significantly enhance the biodiversity values of the stream and UBMA. The enhancement of Kaikorai Stream's riparian margins will be particularly great on the eastern side of Kaikorai Rd, where riparian margin is mostly rank grass and weeds.

Effects on biodiversity values and natural character of riparian margins and the coast (Rules 10.5.3.1, 10.5.3.2.a and 20.10.4.1.d)

The proposed reduction in esplanade reserve area is negligible, but we acknowledge that the proposed reduction in width may have some adverse effects on biodiversity values. In particular, reducing the width of riparian margins typically prevents indigenous vegetation from naturally regenerating without weed control, and reduces the effectiveness of the margin as filter²

However, it is not practicable to provide the required esplanade reserve for the reasons discussed above. The question is therefore whether the proposed reserve will adequately offset any adverse effects that providing a narrower reserve will have on biodiversity values.

Although it would be wider, the required esplanade reserve will still be a small and isolated area of habitat. In contrast, although the proposed esplanade reserve may not be self-sustaining, it will provide the values described in the previous section along a longer stretch of Kaikorai Stream. In particular, erosion and flooding mitigation are identified by the 2GP as the Stream's key values, and the proposed reserve will arguably enhance these values more than the required reserve would.

Regarding the requirements for biodiversity offsets set out by Policy 2.2.3.6, we note that:

- The offset location is near the donor site.
- The proposed reserve will provide the same biodiversity values as the required reserve
- The gains in biodiversity values (the provision of a number of values along a greater length of Kaikorai Stream, and arguably greater habitat connectivity) are demonstrably additional to those that may have occurred if the proposed activity had not gone ahead.
- The positive effects will last in perpetuity.

² Parkyn S., Shaw W. and Eades P. (2000) Review of information on riparian buffer widths necessary to support sustainable vegetation and meet aquatic functions. Auckland: Auckland Regional Council.

We therefore consider that the proposed esplanade reserve will result in at least no net loss in the biodiversity values of Kaikorai Stream and the wider Kaikorai Estuary UBMA. It has the potential to enhance the natural functioning, water quality and aquatic habitats of Kaikorai Stream and mitigate natural hazards, therefore fulfilling the purpose of esplanade reserves under s 229 of the RMA.

Overall, we adverse effects of the proposal on biodiversity values and natural character of riparian margins to be **less than minor**.

Effects on amenity

Although not identified as a relevant matter of discretion, we address the effects of the reduced esplanade reserve on amenity here for completeness.

The required reserve would only have limited effects on amenity; it would have positive effects on visual amenity for users of Shand Park and passers-by on Brighton Rd. The proposed reserve will actually have greater positive effects on amenity. It will extend further to the west, but more importantly, it will extend to the recreation area on the eastern side of Brighton Rd. Aside from some landscape plantings on the true left of Kaikorai Stream, the riparian vegetation in this area is mostly rank grass and weeds. Consequently, the proposed reserve will have a significant positive effect on the amenity of the recreation area, and will also be very visible from Brighton Rd.

4.6 Risk from natural hazards (Rules 11.5.2.1, 11.5.2.3, 20.10.4.1.f and 20.10.5.8)

The proposal provides for an industrial activity on Lot 1, which is within the Haz2 (flood) Overlay Zone. However, this is an existing activity, and no changes to its extent or intensity are proposed. Additionally, we note that it does not involve any permanent structures or earthworks.

Land use consent LUC-2019-233 authorised the existing industrial activity on 7A Brighton Rd, which is also within the Haz2 (flood) Overlay Zone. The decision report for this resource consent recognised that the applicant was aware of the risk of natural hazards and intended to store equipment in a way that would minimise the potential risk arising from natural hazard events. The same is true in this case.

Overall, we consider the proposal's adverse effects with respect to risk from natural hazards to be **less than minor**.

4.7 NES-CS—risk to human health

The attached HAIL assessment report states:

In this case, the proposed subdivision is simply a boundary adjustment that seeks to formalise the existing use of the sites. It will therefore not establish a new industrial activity on Lot 1 or intensify the existing industrial activity being undertaken by Clearwater Civil. As there will be no practical change to the existing situation, we consider that the proposal poses no risk to human health.

Overall, we consider the proposal's adverse effects with respect to risk to human health to be **nil**.

4.8 Cumulative effects

The adverse effects of this proposal will not add to the existing effects on the subject site or on adjoining sites such that its cumulative effects are more than minor.

4.9 Overall effects

Based on the above assessment, we conclude that the proposal's adverse effects on the environment will be **less than minor**.

5 NOTIFICATION ASSESSMENT

Under Rule 20.4.3.2, all applications for industrial activities in the recreation zone are to be publicly notified in accordance with s 95A of the RMA, unless the DCC considers special circumstances exist in relation to the application.

Special circumstances are not defined in the RMA, but through case law. *Far North District Council v Te Rūnanga-ā-iwi O Ngāti Kahu* [2013] NZCA 221 is the authority on the definition of special circumstances. The Court of Appeal stated at [33] that a special circumstance is something "outside the common run of things which is exceptional, abnormal or unusual but less than extraordinary or unique." The Court also confirmed at [37] that "the special circumstance must relate to the subject application."

In this case, the proposal does not involve establishing a new industrial activity on Lot 1 or extending or intensifying the existing industrial activity. It will simply adjust the boundary between the Clearwater land and the subject site so that the ownership of these sites reflects their existing and foreseeable future use. Consequently, we consider that special circumstances exist in relation to the application.

There are no other rules in a plan or national environmental standard that require public or limited notification of the application. The proposal's adverse environmental effects will not be more than minor, and no affected persons have been identified under section 95E. We therefore consider that it is appropriate for the application to be processed on a non-notified basis.

6 OBJECTIVES AND POLICIES ASSESSMENT

An assessment of the proposal against the relevant objectives and policies of the 2GP is carried out in Table 3 below.

Table 3. Assessment of the proposal against the relevant objectives and policies of the 2GP.

Objectives and policies	Assessment
Objective 2.2.3 Dunedin's significant indigenous biodiversity is protected or enhanced and restored; and other indigenous biodiversity is maintained or enhanced, and restored; with all indigenous biodiversity having improved connections and improved resilience.	In this case, it is not practicable to provide the required esplanade reserve. However, the proposed esplanade reserve has been designed to offset any adverse effects on biodiversity resulting from the reduction in reserve area

Policy 2.2.3.6 Only consider a biodiversity offset, as a positive effect to be balanced against the adverse effects of an activity, where the offset: a. is proposed to address residual adverse effects after taking steps to first: i. avoid adverse effects; then ii. minimise adverse effects as far as practicable; by 1. mitigating effects and then remedying effects that cannot be mitigated; and 2. ensuring that any on-site rehabilitation or restoration measures will occur as soon as practicable; b. is close to the donor site, unless a more distant site will result in a significantly better ecological outcome c. will result in no net loss, and preferably a net gain in biodiversity value; where: i. the biodiversity values gained will be the same or similar to those being lost; ii. any gains in biodiversity values are demonstrably additional to those that may have occurred if the proposed activity had not gone ahead; and iii. the positive effects of the offset last at least as long as the adverse effects of the proposed activity, and preferably in perpetuity. d. will not be used to offset irreplaceable and vulnerable biodiversity and is not contrary to Policy 11 of the New Zealand Coastal Policy Statement; and e. does not include forfeiting rights to permitted or consented land use or development activities.	so that there is at least no net loss in biodiversity.
Objective 2.4.1 The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: a. important green and other open spaces, including green breaks between coastal settlements; b. trees that make a significant contribution to the visual landscape and history of neighbourhoods; c. built heritage, including nationally recognised built heritage; d. important visual landscapes and vistas; e. the amenity and aesthetic coherence of different environments; and f. the compact and accessible form of Dunedin.	The proposed boundary adjustment will not result in the loss of any green space associated with Shand Park or Kaikorai Estuary. Additionally, the proposed esplanade reserve will improve the amenity value of the recreation area on the eastern side of Brighton Rd.
Objective 6.2.3	The proposal will not result in any

Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public. Policy 6.2.3.4 Require land use activities to provide the amount of parking necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not practicable, adequately mitigated. Policy 6.2.3.9 Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where: a. adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated; and b. any associated changes to the transportation network will be affordable to the public in the long term.	change to existing situation with respect to access, parking and manoeuvring or. It will therefore have no effects that would not maintain the safety and efficiency of the transport network.
Objective 9.2.2 Land use, development and subdivision activities maintain or enhance people's health and safety. Policy 9.2.2.7 Only allow land use, development, or subdivision activities that may lead to land use and development activities, in areas without public wastewater and stormwater infrastructure where these activities ensure wastewater and stormwater will be disposed of in such a way that avoids or, if avoidance is not practicable, ensures any adverse effects on the health of people on the site or on surrounding sites will be insignificant.	There are existing service connections to the Clearwater land, and 9A Brighton Rd is solely used as a reserve. Moreover, as no changes are proposed to the existing activities on the sites, no further additional infrastructure is required.
Objective 10.2.1 Biodiversity values are maintained or enhanced, including by protecting areas of significant indigenous vegetation and the significant habitats of indigenous fauna. Objective 10.2.1.2 Avoid adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna or, if avoidance is not practicable, ensure that: a. there is no net loss and preferably a net gain in the biodiversity values of the area; or b. where there are no practicable alternative locations, any proposal for a biodiversity offset is in accordance with Policy 2.2.3.6; or c. where a biodiversity offset is not practicable,	As discussed above, the proposal will result in at least no net loss of biodiversity values associated with Kaikorai Stream and the wider Kaikorai Estuary UBMA.

environmental compensation is proposed in accordance with Policy 2.2.3.7.	
Objective 10.2.2 The biodiversity values and natural character of the coast and riparian margins are maintained and enhanced. Policy 10.2.2.7 Only allow subdivision activities adjacent to water bodies and the coast where the subdivision is designed to ensure that the following biodiversity values and natural character values are maintained or enhanced, including through provision of an esplanade reserve or esplanade strip in identified locations: a. biodiversity values of riparian margins and the coast; the water quality and aquatic habitats of the water body or coast; and b. the natural functioning of the adjacent sea or water body.	The proposal will enhance the biodiversity values and natural character of the riparian margins within the proposed reserve area, which are currently in a degraded state.
Objective 10.2.4 Subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai. Policy 10.2.4.3 Require subdivision of land to enhance public access to the natural environment through: a. requiring an esplanade reserve or esplanade strip of an appropriate width and location adjacent to identified water bodies and the coast; and b. where practicable, providing opportunities for access in other areas where this will enhance recreational opportunities, particularly through connecting to and expanding the existing tracks network or utilising adjacent unformed legal roads.	The proposal will have no practical effects on access to Kaikorai Stream. In any case the stretch of the stream within the subdivision area has limited recreational value and is already accessible from Shand Park.
Objective 11.2.1 Land use and development is located and designed in a way that ensures that the risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term. Policy 11.2.1.6 In the Ha2 (flood) Overlay Zone, only allow natural hazards sensitive activities and natural hazards potentially sensitive activities where: a. the activity has a critical operational need to locate within the Haz2 (flood) Overlay Zone and risk is minimised as far as practicable; or b. the scale, location and design of the activity or other	The proposal will not result in any practical changes to the existing industrial activity. Clearwater Civil are aware of the risk of natural hazards and will continue to manage their activities in a way that minimises this risk. There will therefore be no increase in the risk from natural hazards resulting from the proposal

factors means risk is avoided, or is no more than low. Policy 11.2.1.12 In all hazard overlay zones, the swale mapped area, the dune system mapped area, or in any other area that the DCC has information to suspect there may be risk from a natural hazard, only allow subdivision activities where there is a reasonable level of certainty that any future land use or development will meet policies 11.2.1.1–11.2.1.11.	
Objective 20.2.1 The Recreation Zone provides opportunities for a wide range of recreational, sporting, community, and cultural activities. Policy 20.2.1.4 Avoid industrial, residential, commercial, rural, and major facility activities, unless otherwise provided for in the Recreation Zone.	The industrial activity on Lot 1 is existing, and it is not practicable for Lot 1 to be used as a recreation area given its shape and proximity to an industrial area.
Objective 20.2.2 Land use, development and subdivision activities: support the efficient and effective operation of the recreation area; maintain a high standard of on-site amenity for users of the recreation area; and maintain or enhance neighbourhood amenity and the amenity of any surrounding residential properties. Objective 20.2.2.11 Only allow subdivision activities where the subdivision does not adversely affect the efficient and effective operation of the recreation area.	As mentioned above, the proposal will not result in any practical change to the use of the sites, and although Lot 1 is already functionally industrial land, this does not detract from the efficient and effective operation of the rest of 9A Brighton Rd as a recreation area.

Overall, we consider the proposal to be consistent with the relevant 2GP objectives and policies.

7 SECTION 104D ASSESSMENT

Under s 104D, resource consent for a non-complying activity may only be granted if the consent authority is satisfied that the proposal will meet at least one of two gateway tests. These tests require that *either* the proposal's adverse effects on the environment will be no more than minor, *or* it is not contrary to the objectives and policies of the relevant plan and/or proposed plan.

The proposal's activity status is non-complying, so s 104D applies. Based on the assessments carried out in Sections 4 and 6 above, we believe it satisfies both the s 104D gateway tests.

8 SECTION 104 ASSESSMENT

Additional matters that must be considered under s 104 of the RMA are discussed below.

8.1 Relevant planning provisions

Sch 4 requires the proposal to be assessed against any relevant provisions of a document referred to in s 104(1)(b). The proposal has already been assessed against the relevant provisions of the NESCS and 2GP. No other documents referred to in s 104(1)(b) are relevant.

However, another provision of the 2GP is relevant here. Rule 20.12.2.1.c.ii states that when assessing the significant of the effects of non-complying activities, consideration will be given to the potential for cumulative adverse effects arising from similar activities occurring as a result of a precedent being set by the granting of resource consent.

Case law has established that consent conditions set a practical precedent rather than a legal precedent, and this is not an effect on the environment. Practical precedent therefore cannot be included in the AEE or included in a consent authority's s 104(a) assessment. However, if practical precedent is addressed by a relevant provision of a s 104(1)(b), it may be considered under this subsection. Otherwise, it can still be considered under the catch-all s 104(1)(c). As Rule 20.12.2.1.c.ii addresses practical precedent, it should be considered under s 104(1)(b).

In this case, the proposal is non-complying activity because it involves the use of recreational land (Lot 1) for industrial activity. However, as has been discussed, it does not involve establishing a new industrial activity on Lot 1, or the extension or intensification of the existing industrial activity. The proposal will simply adjust the boundary between 7 and 9A Brighton Rd, formalising the existing uses of the subject sites. It will therefore not set a practical precedent for allowing industrial activities on recreation land that would undermine the integrity of the 2GP.

8.2 Offsetting or compensation measures

Section 104(1)(ab) of the RMA requires the consent authority to have regard to any measure proposed or agreed to by the applicant to offset or compensate for any adverse effects that the proposal will or may have on the environment. The proposed esplanade reserve has been designed with a greater length than the required reserve, and to include weed control and planting of indigenous species, to offset any adverse effects arising from the provision of a reduced esplanade reserve.

8.3 Other matters

Section 104(1)(c) of the RMA requires the consent authority to have regard to any other matters it considers relevant and reasonably necessary to determine the application. There are no other matters to consider.

9 PART 2 ASSESSMENT

Part 2 of the RMA (ss 5–8) sets out the purpose and principles of the Act. Section 5 identifies the purpose and s 6 outlines a number of matters of national importance that must be recognised and provided for. Section 7 sets out other matters to be given particular regard by all persons exercising functions and powers under the RMA, and s 8 requires the principles of the Treaty of Waitangi to be taken into account.

Sch 4 of the Act requires all resource consent applications to include an assessment of the proposal against the matters set out pt 2.

Based on the above assessment of the proposal against the relevant statutory documents, we conclude that the proposal will achieve the purpose of the RMA.

10 CONCLUSION

The applicant proposes to subdivide a portion of 9A Brighton Rd into two fee simple allotments. In legal effect, this subdivision will be an adjustment of the boundary between 7 and 9A Brighton Rd that will formalise the existing uses of the subject sites.

The proposal has a **non-complying** activity status. It requires the following resource consents under the 2GP:

- Subdivision consent for the proposed subdivision activity and a reduced esplanade reserve.
- Land use consent for:
 - An (existing) industrial activity in the Recreation zone.
 - An (existing) natural hazards potentially sensitive activity in the Haz2 (flood) Overlay Zone.

It also requires land use consent under the NESCS for subdividing a piece of land for which no PSI or DSI exists.

The proposal's adverse effects are less than minor, no affected persons have been identified, and we consider that special circumstances apply to the application. Furthermore, the proposal is consistent with the relevant 2GP objectives and policies and granting consent will not undermine the integrity of the 2GP. We therefore believe it is appropriate for this application to be processed on a non-notified basis.

For any further information or discussion in respect of this application, please do not hesitate to contact the author below.

Yours faithfully,

PATERSON PITTS GROUP

Vyvienne Evans

Planner

M: 021-198-0716

T: 03-477-3245

E: vyvienne.evans@ppgroup.co.nz



APPLICATION FORM FOR A RESOURCE CONSENT

PLEASE FILL IN ALL THE FIELDS

Application details

I/We

(must be the FULL name(s) of an individual or an entity registered with the New Zealand Companies Office. Family Trust names and unofficial trading names are not acceptable: in those situations, use the trustee(s) and director(s) names instead) hereby apply for:

Land Use Consent Subdivision Consent

I opt out of the fast-track consent process: Yes No

(only applies to controlled activities under the district plan, where an electronic address for service is provided)

Brief description of the proposed activity:

Have you applied for a Building Consent? Yes, Building Consent Number ABA No

Site location/description

I am/We are the: (owner, occupier, lessee, prospective purchaser etc) of the site (tick one)

Street address of site:

Legal description:

Certificate of Title:

Contact details

Name: (applicant agent (tick one))

Address:

Postcode:

Phone (daytime):

Email:

Chosen contact method (this will be the first point of contact for all communications for this application)

I wish the following to be used as the address for service (tick one): Email Post Other:

Ownership of the site

Who is the current owner of the site?

If the applicant is not the site owner, please provide the site owner's contact details:

Address:

Postcode:

Phone (daytime):

Email:

Planning Application Fees Payment Details (Who are we invoicing)

THIS FORM MUST BE COMPLETED FOR ALL PLANNING APPLICATIONS THAT ATTRACT A FEE. ALL FIELDS ARE MANDATORY.

This information is required to assist us to process resource consent invoices and refunds at lodgement and the end of the process. If you have any queries about completing this form, please email planning@dcc.govt.nz

Deposit Payment Payee Details:

Full Name of Deposit Payee (Person or Company):

Mailing Address of Deposit Payee (please provide PO Box number where available):

Email Address of Deposit Payee:

Daytime contact phone number:

Important Note: The Payee will automatically be invoiced for the deposit and/or any additional costs. Should a portion of the deposit be unspent, it will be refunded to the payee.

Fees

Council recovers all actual and reasonable costs of processing your application. Most applications require a deposit and costs above this deposit will be recovered. A current fees schedule is available on www.dunedin.govt.nz or from Planning staff. Planning staff also have information on the actual cost of applications that have been processed. This can also be viewed on the Council website.

Development contributions

Your application may also be required to pay development contributions under the Council's Development Contributions Policy. For more information please ring 477 4000 and ask to speak to the Development Contributions Officer, or email development.contributions@dcc.govt.nz.

Occupation of the site

Please list the full name and address of each occupier of the site:

Monitoring of your Resource Consent

To assist with setting a date for monitoring, please estimate the date of completion of the work for which Resource Consent is required. Your Resource Consent may be monitored for compliance with any conditions at the completion of the work. (If you do not specify an estimated time for completion, your Resource Consent, if granted, may be monitored three years from the decision date).

(month and year)

Monitoring is an additional cost over and above consent processing. You may be charged at the time of the consent being issued or at the time monitoring occurs. Please refer to City Planning's Schedule of Fees for the current monitoring fee.

Detailed description of proposed activity

Please describe the proposed activity for the site, giving as much detail as possible. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please provide proposed site plans and elevations.

Description of site and existing activity

Please describe the existing site, its size, location, orientation and slope. Describe the current usage and type of activity being carried out on the site. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please also provide plans of the existing site and buildings. Photographs may help.

(Attach separate sheets if necessary)

District plan zoning

What is the District Plan zoning of the site?

Are there any overlaying District Plan requirements that apply to the site e.g. in a Landscape Management Area, in a Townscape or Heritage Precinct, Scheduled Buildings on-site etc? If unsure, please check with City Planning staff.

Breaches of district plan rules

Please detail the rules that will be breached by the proposed activity on the site (if any). Also detail the degree of those breaches. In most circumstances, the only rules you need to consider are the rules from the zone in which your proposal is located. However, you need to remember to consider not just the Zone rules but also the Special Provisions rules that apply to the activity. If unsure, please check with City Planning staff or the Council website.

Affected persons' approvals

I/We have obtained the written approval of the following people/organisations and they have signed the plans of the proposal:

Name:

Address:

Name:

Address:

Please note: You must submit the completed written approval form(s), and any plans signed by affected persons, with this application, unless it is a fully notified application in which case affected persons' approvals need not be provided with the application. If a written approval is required, but not obtained from an affected person, it is likely that the application will be fully notified or limited notified.

Assessment of Effects on Environment (AEE)

In this section you need to consider what effects your proposal will have on the environment. You should discuss all actual and potential effects on the environment arising from this proposal. The amount of detail provided must reflect the nature and scale of the development and its likely effect. i.e. small effect equals small assessment.

You can refer to the Council's relevant checklist and brochure on preparing this assessment. If needed there is the Ministry for the Environment's publication "A Guide to Preparing a Basic Assessment of Environmental Effects" available on www.mfe.govt.nz. Schedule 4 of the Resource Management Act 1991(RMA) provides some guidance as to what to include.

(Attach separate sheets if necessary)

The following additional Resource Consents from the Otago Regional Council are required and have been applied for: Yes No

Water Permit Discharge Permit Coastal Permit Land Use Consent for certain uses of lake beds and rivers Not applicable

Assessment of Objectives and Policies

In this Section you need to consider and assess how your application proposal aligns with the relevant objectives and policies in the District Plan relating to your activity. If your proposal is a discretionary or non-complying activity under the District Plan more attention to the assessment will be necessary as the objectives and policies of the District Plan may not always be in support of the proposed activity.

Declaration

I certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I accept that I have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I agree to pay all the fees and charges levied by the Dunedin City Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid.

Signature of: Applicant Agent (tick one):

Date:

Privacy – Local Government Official Information and Meetings Act 1987

You should be aware that this document becomes a public record once submitted. Under the above Act, anyone can request to see copies of applications lodged with the Council. The Council is obliged to make available the information requested unless there are grounds under the above Act that justify withholding it. While you may request that it be withheld, the Council will make a decision following consultation with you. If the Council decides to withhold an application, or part of it, that decision can be reviewed by the Office of the Ombudsmen.

Please advise if you consider it necessary to withhold your application, or parts of it, from any persons (including the media) to (tick those that apply):

- ☐ Avoid unreasonably prejudicing your commercial position
- ☐ Protect information you have supplied to Council in confidence
- ☐ Avoid serious offence to tikanga Māori or disclosing location of waahi tapu

What happens when further information is required?

If an application is not in the required form, or does not include adequate information, the Council may reject the application, pursuant to section 88 of the RMA. In addition (section 92 RMA) the Council can request further information from an applicant at any stage through the process where it may help to a better understanding of the nature of the activity, the effects it may have on the environment, or the ways in which adverse effects may be mitigated. The more complete the information provided with the application, the less costly and more quickly a decision will be reached.

Further assistance

Please discuss your proposal with us if you require any further help with preparing your application. The Council does provide pre-application meetings without charge to assist in understanding the issues associated with your proposal and completing your application. This service is there to help you.

Please note that we are able to provide you with planning information but we cannot prepare the application for you. You may need to discuss your application with an independent planning consultant if you need further planning advice.

City Planning Staff can be contacted as follows:

IN WRITING: Dunedin City Council, PO Box 5045, Dunedin 9054

IN PERSON: Customer Services Centre, Ground Floor, Civic Centre, 50 The Octagon

BY PHONE: (03) 477 4000

BY EMAIL: planning@dcc.govt.nz

There is also information on our website at www.dunedin.govt.nz

Information requirements

- Completed and Signed Application Form
- Description of Activity and Assessment of Effects
- Site Plan, Floor Plan and Elevations (where relevant)
- Written Approvals
- Payee details
- Application fee (cash, eftpos, direct credit or credit card (surcharge may apply))
- Certificate of Title (less than 3 months old) including any relevant restrictions (such as consent notices, covenants, encumbrances, building line restrictions)
- Forms and plans and any other relevant documentation signed and dated by Affected Persons

In addition, subdivision applications also need the following information:

- Number of existing lots
- Number of proposed lots
- Total area of subdivision
- The position of all new boundaries

In order to ensure your application is not rejected or delayed through requests for further information, please make sure you have included all of the necessary information. A full list of the information required for resource consent applications is in the Information Requirements Section of the District Plan.

OFFICE USE ONLY

Has the application been completed appropriately (including necessary information)?

Yes

No

Application:

Received

Rejected

Received by:

Counter

Post

Courier

Other:

Comments:

(Include reasons for rejection and/or notes to handling officer)

Planning Officer:

Date:



29 October 2021

City Planning
Dunedin City Council
PO Box 5045
Dunedin 9054
Attn: The Senior Planner

HAIL ASSESSMENT REPORT

7 Brighton Rd, Green Island, Dunedin

1 INTRODUCTION

This report is provided in support of the attached application seeking resource consent to subdivide the land at 9A Brighton Rd into two fee simple allotments. For clarity, it is worth repeating several details of the proposal here:

- The subject sites are the land at 7 and 7A Brighton Rd (the Clearwater land), and 9A Brighton Rd, but the actual subdivision area is a 9750 m² portion of 9A Brighton Rd.
- In legal effect, the proposed subdivision will be an adjustment of the boundary between 7 and 9A Brighton Rd.
- 9A Brighton Rd is recreation land, but a strip that adjoins the Clearwater land has long been used for industrial activity (the industrial strip).
- Proposed Lot 1 is a portion of this strip and will be amalgamated with 7 Brighton Rd.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) came into force on 1 January 2012. The NES-CS applies when a person wants to do an activity described in reg 5(2)–(6) on a piece of land described in reg 5(7) or 5(8), unless the requirements of reg 5(9) are met.

The proposal involves subdividing recreational land, and although the attached application seeks resource consent to undertake an industrial activity in the recreation zone (on Lot 1), this activity is existing. The proposal therefore does not involve changing the use of land in the context of the NES-CS. Nevertheless, if the site contains a piece of land described by reg 5(7), the proposal will involve an activity described by reg 5(5) and the NES-CS will apply.

This report will:

- Describe the site's land use history with respect to soil contamination
- Assess the proposal against the NES-CS

In accordance with reg 6 of the NES-CS, our assessment is based on the most up-to-date information about the site held by the Dunedin City Council (DCC) and the Otago Regional Council (ORC) to establish whether or not the site contains a piece of land described by reg 5(7).

DUNEDIN:

P.O. Box 5933,
Dunedin 9058.

T 03 477 3245

CHRISTCHURCH:

P.O. Box 160094,
Christchurch 8441.

T 03 928 1533

ALEXANDRA:

P.O. Box 103,
Alexandra 9340.

T 03 448 8775

CROMWELL:

P.O. Box 64,
Cromwell 9342

T 03 445 1826

QUEENSTOWN:

P.O. Box 2645,
Queenstown 9349

T 03 441 4715

WANAKA:

P.O. Box 283,
Wanaka 9305

T 03 443 0110

2 ASSESSMENT

We undertook a search of the ORC's Hazardous Activities and Industries List (HAIL) Database and lodged a HAIL search request with the DCC on 16 September 2021 (HAIL-2021-244).

The sites are not recorded as a HAIL site in the ORC's HAIL Database, but 9A Brighton Rd it is adjacent to a number of HAIL sites. However, as these HAIL sites are distant from the subdivision area, they are irrelevant and are not discussed further.

The HAIL search summary advises that all of the Clearwater land and the industrial strip is a confirmed HAIL site. The following items on the HAIL apply:

- F8: Transport depots or yards including areas used for refuelling or the bulk storage of hazardous substances
- A17: Storage tanks or drums for fuel, chemicals or liquid waste

The summary also notes that if the industrial activities on the sites have involve stockpiling material other than cleanfill, Item G3 on the HAIL may apply:

- G3: Landfill sites

2.1 Land use history

In an email dated 12 October 2021, the DCC archivist provides the following information:

- They examined the Green Island Borough Council (GIBC) valuations rolls 1947–1978, GIBC Building Permits, GIBC Dangerous Goods lists, landfills listings, DCC City Engineers correspondence 1990–1996, Inward Correspondence Series 1989-2002.
- The only archival record found was a City Engineers File.
- The sites' land use history according to the information in the DCC archives can be summarised as: they were vacant land until a dwelling was erected on 7 Brighton Rd in 1949.

The dwelling was erected on the northern end of 7 Brighton Rd (Lot 1 DP 2282) under H-1949-237093. A garage and shed/workshop were subsequently erected under building consents H-1950-237245 and H-1956-238209, respectively. There were no further notable changes to the use of any of the subject sites until approximately 1985.

In the 1985 aerial photo of the sites, Kaikorai Stream has been realigned to its current path. The aerial photos also show that Shand Park was established on 9A Brighton Rd between 1990 and 2000, and there have been no notable changes to the use of this site (excluding the industrial strip) since then. A letter from N E Ranger dated 4 September 1996 states that Lot 1 DP 2282 was zoned residential until 1985, when it was rezoned to industrial.

According to a letter from Graeme Anderson Contracting dated 9 July 1992, Graeme Anderson purchased the southern end of 7 Brighton Rd (Sec 195 Blk V Lower Kaikorai SD, which was then addressed as 9 Brighton Rd) in 1992 to erect a workshop on it. The building platform for this was constructed under earthworks permit E578.

The 2000 aerial photo shows Sec 195 being used as a timber yard, and residential activity on Lot 1 DP 2282. This is confirmed by a Noise Nuisance memorandum from the DCC's Environmental Health Inspector dated 27 February 2001, which addressed a complaint from the occupants of the dwelling about the noise emitted by the timber operation on Sec 195.

Residential activity continued on Lot 1 DP 2282 until the dwelling and its ancillary buildings were demolished by Timber Direct under building consent ABA-2008-1781. Timber Direct then erected a commercial building containing a workshop for timber machining and ancillary staff facilities under building consents ABA-2008-2288/1–3. Aerial photos from 2007–2013 show that by this time the timber yard had extended onto 7A Brighton Rd and the industrial strip of 9A Brighton Rd.

Under its current ownership, the Clearwater land (and the industrial strip) has been used by Clearwater Civil as a depot for civil construction and earthworks contracting. This use involves stockpiling material and the storage and refuelling of equipment. The Clearwaters enquired about leasing the industrial strip from the DCC circa August 2015. The HAIL search summary notes that the photos included in this enquiry show some rubbish on the industrial strip and on 7A Brighton Rd. The enquiry itself acknowledges this, stating that rubbish (including a decaying shipping container) left by the previous owner needs to be removed. This has since been undertaken, and the industrial strip has also been resurfaced and fenced.

Also in 2015, a 20,000 L aboveground, double skinned diesel tank was installed on 7 Brighton Rd under land use consent LUC-2015-602. The HAIL search summary notes that this is slightly further from the boundary with 3 Brighton Rd than the consent documentation shows. Various site photos from 2017, 2018 and 2019 show stockpiles of earth and gravel. The DCC granted land LUC-2019-233 for stockpiling of materials auxiliary to an industrial activity. We have found no evidence of landfilling on the Clearwater land or the industrial strip during our site visits.

In summary:

- 9A Brighton Rd is recreational land and has never been developed.
- The Clearwater land was vacant until a dwelling was erected on the northern end of 7 Brighton Rd in 1949. This land was used for residential activity until 2008.
- Industrial activity was first established on the southern end of 7 Brighton Rd in 1992 and had extended to 7A Brighton Rd and the industrial strip by 2007.
- In 2008 the dwelling on the northern end of 7 Brighton Rd; since then, all the Clearwater land and the industrial strip have been used for industrial activity.
- Under the current ownership, the industrial activity includes stockpiling material and refuelling equipment from an aboveground diesel tank on 7 Brighton Rd.

2.2 NES-CS regulations

Based on the above information, we consider that:

- Item F8 applies to all of the Clearwater land and the industrial strip.
- Item A17 only applies to the piece of land on 7 Brighton Rd containing the diesel tank; the tank's location is well-defined, and it is a modern, double-skinned tank situated on a concrete pad.
- Item G3 does not apply, as there is no evidence on landfilling activity on the Clearwater land or the industrial strip.
- It is more likely than not that no HAIL activities have been undertaken on the rest of 9A Brighton Rd.

However, the only piece of land described by reg 5(7) within the subdivision area is Lot 1. We have not commissioned a Detailed Site Investigation (DSI) of Lot 1, so it is not exempt under reg 5(9). It is therefore a piece of land to which the NES-CS applies.

As no Preliminary Site Investigation (PSI) or DSI of Lot 1 exists, the proposal does not meet the requirements to be considered a permitted (reg 8(4)) controlled (reg 9(3)) or restricted discretionary (reg 10(2)). It is therefore a discretionary activity under reg 11.

In this case, the proposed subdivision is simply a boundary adjustment that seeks to formalise the existing use of the sites. It will therefore not establish a new industrial activity on Lot 1 or intensify the existing industrial activity being undertaken by Clearwater Civil. As there will be no practical change to the existing situation, we consider that the proposal poses no risk to human health.

3 CONCLUSION

After reviewing all available information on the site's land use history, Item F8 applies to the Clearwater land and the industrial strip, and Item A17 applies to the portion of 7 Brighton Rd containing the diesel tank. However, the only piece of land within the subdivision area is Lot 1, to which only Item F8 applies. As no PSI or DSI of Lot 1 exists, it is a piece of land to which the NES-CS applies, and the proposed subdivision is a **discretionary** activity under reg 11.

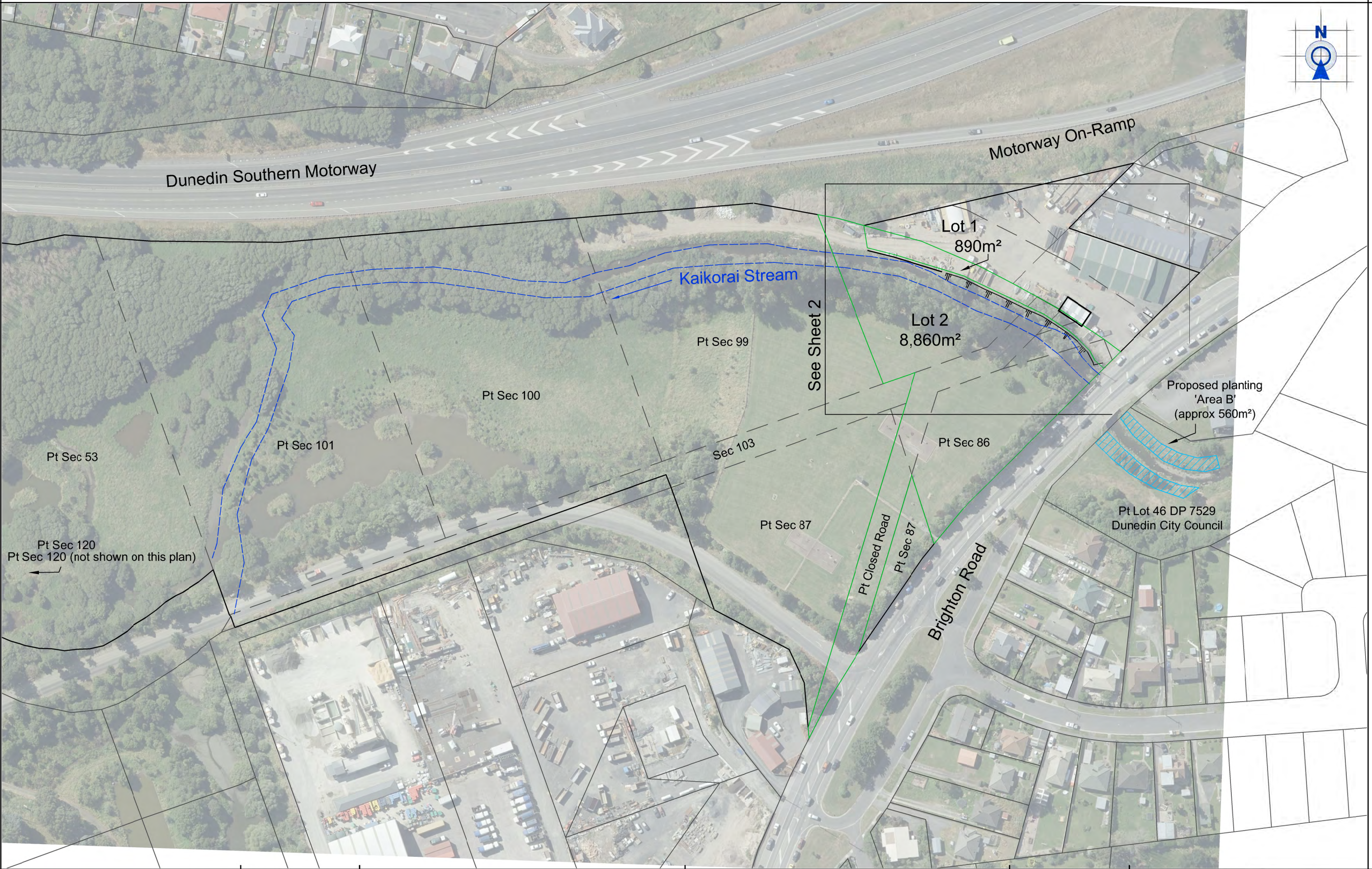
The proposed subdivision is a boundary adjustment that seeks only to formalise the existing use of the sites, and consequently involves no practical change in the use of Lot 1. We therefore consider that it poses no risk to human health. If we discover evidence to the contrary during our involvement with the proposal, we will bring this to the attention of the applicant and the DCC so that the appropriate mitigation measures can be developed.

For any further information or discussion in respect of this matter, please do not hesitate to contact the author below.

Yours faithfully,
PATERSON PITTS GROUP

Vyvienne Evans
Planner

M: 021-198-0716
T: 03-477-3245
E: vyvienne.evans@ppgroup.co.nz



PATERSONPITTSGROUP Surveying • Planning • Engineering Your Land Professionals www.ppgroup.co.nz 0800 PPGROUP 	DUNEDIN: 229 Moray Place, PO Box 5933, Dunedin 9058. T 03 477 3245 F 03 474 0484 E dunedin@ppgroup.co.nz	Client/Location: J R J and S T Clearwater Ltd 7 Brighton Road, Green Island	Purpose/Drawing Title: Proposed Subdivision of Registered Titles OT16D/1193 & OT16D/1194	© COPYRIGHT. This drawing, content and design remains the property of Paterson Pitts Limited Partnership and may not be reproduced in part or full or altered without the written permission of Paterson Pitts Limited Partnership. This drawing and its content shall only be used for the purpose for which it is intended. No liability shall be accepted by Paterson Pitts Limited Partnership for its unauthorized use.	<table><tr><td>Surveyed by:</td><td>MBP</td><td rowspan="4">Original Size:</td><td rowspan="4">Scale:</td></tr><tr><td>Designed by:</td><td>KAB</td></tr><tr><td>Drawn by:</td><td>KAB</td></tr><tr><td>Checked by:</td><td>KAB</td></tr><tr><td>Approved by:</td><td>KAB</td><td rowspan="3">A3</td><td>1:1500</td></tr><tr><td colspan="2">Job Ref:</td><td colspan="2">DO NOT SCALE</td></tr><tr><td colspan="2">D17155</td><td colspan="2"></td></tr><tr><td colspan="2">Sheet No:</td><td>1/2</td><td>Revision No:</td><td>A</td><td>Date Created:</td><td>11/08/2021</td></tr></table>	Surveyed by:	MBP	Original Size:	Scale:	Designed by:	KAB	Drawn by:	KAB	Checked by:	KAB	Approved by:	KAB	A3	1:1500	Job Ref:		DO NOT SCALE		D17155				Sheet No:		1/2	Revision No:	A	Date Created:	11/08/2021
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D17155																																		
Sheet No:		1/2	Revision No:	A	Date Created:	11/08/2021																												

Current Ownership:
RT OT16D/1193: Dunedin City Council
RT OT16D/1194: Dunedin City Council
RT 461127: J R J and S T Clearwater Ltd
RT 523445: J R J and S T Clearwater Ltd



Motorway On Ramp

Sec 24
SO 335606
RT 543445

Sec 25
SO 335606
RT 523445

Sec 26
SO 335606
RT 523445

Pt Sec 98
RT OT16D/1194

Lot 1
890m²

'B'

1.1m

Proposed boundary
approx. 1.1m from
top of bank

Boundary to follow existing fenceline

Concrete barrier

1.1m

Pt Closed Road
RT OT16D/1193

Pt Sec 98
RT OT16D/1194

Lot 1
DP 2282
RT 461127

Access shown 'A' to 'B' for DCC maintenance
vehicles to be provided through Clearwater's
yard (to be established by covenant agreement
over RT 461127 and RT 523445).

Sec 185
SO 21817
RT 461127

Lot 2
8,860m²

Proposed planting
'Area A'
(approx. 1,260m²)

Located along the northern bank of the
Kaikorai Stream for the length of Lot 2

Kaikorai Stream

Existing
Workshop

Pt Sec 102
RT OT16D/1194

Pt Sec 85
RT OT16D/1194

Brighton Road

'A'

Pt Sec 99
RT OT16D/1194

Pt Sec 98
RT OT16D/1194

Pt Sec 102
RT OT16D/1194

Pt Closed Road
RT OT16D/1193

Pt Sec 86
RT OT16D/1194

Sec 103
RT OT16D/1194

- Notes:
- 1. Lot 1 is to be amalgamated with RT 461127.
 - 2. Lot 2 is to be held in a common title with the residual portions of RT OT16D/1193 and RT OT16D/1194.

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Client/Location:

J R J and S T Clearwater Ltd
7 Brighton Road, Green Island

Purpose/Drawing Title:

Proposed Subdivision of Registered Titles
OT16D/1193 & OT16D/1194

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Approved by:	KAB		
Job Ref:	D17155	Sheet No:	2/2
		Revision No:	A
		Date Created:	11/08/2021

Memorandum

TO: Kurt Bowen, Patterson Pitts Ltd

FROM: Angus Robertson, DCC Parks and Recreation

DATE: 4 June 2021

SUBJECT: **ESPLANADE RESERVE**
7 BRIGHTON ROAD, DUNEDIN

Hi Kurt,

You have requested options to support a reduction in esplanade reserve provision as part of a potential subdivision at the above address. Please note all comments provided here are indicative only and subject to further discussion and any plans provided through any future resource consent applications.

There is a statutory requirement for the creation of 20m wide esplanade reserves where subdivisions occur next to streams, lakes and the coastal marine area, unless a resource consent waives or reduces the width of this requirement. The protection of stream and coastal margins helps to conserve environmental values and may also provide opportunities for public access and recreational use, as provided for in s6(a)&(d) of the RMA 1991.

Kaikorai Stream is noted for its high conservation values in Appendix 10C of the 2GP. While parts of the Kaikorai Stream have some recreation value, it is unlikely that this particular portion would benefit from provision for public access. Therefore, any esplanade reserve in this area would primarily focus on affording some ecological protection to the stream and its margins, rather than for recreation value.

While any reductions or waivers for esplanade provisions are decided through an independent hearing committee, PARS require a robust rationale to offer support for this. In assessing a change or reduction to the required esplanade reserve, Council will consider:

1. The effects on the values of the water body;
2. The effects on the natural functioning of the water body;
3. The effects on other biodiversity values and natural character values;
4. Any other measures proposed to enhance the biodiversity of the riparian margin and stream.

A subdivision in this area of Kaikorai Stream would require an esplanade reserve on the true right of the stream, up to 20m wide within the parcel boundaries (in this case, approximately 12m-15m).

While this area has been heavily modified for industrial purposes for some time, this has clearly been exacerbated by the current owner, visible on aerial photography between 2013 and 2018. While PARS accept the majority of the site was modified by a previous owner, in lieu of removing building and storage from the site to enable a continuous full-width esplanade reserve, PARS would expect some additional remediation and planting to offset this loss.

The present planting of the bank with flaxes has been done well, however further planting of the proposed reserve with additional species and removal of both willow and sycamore along here would be beneficial. In order to offset what will effectively be a 10m-15m reduction over approximately 135m (~1800²) of the required width, some additional weed control and planting along the stretch of the proposed reserve, and into the area currently modified and occupied by the Company as well as on a nearby reserve, would go some way to offsetting the loss of riparian margin otherwise required.

On the following page, Figure 1 shows the required esplanade reserve, while Figure 2 shows a possible combination of areas for enhancement that could offset the loss of this esplanade reserve. A planting plan would need to be provided to PARS by the applicant for approval, and carried out by a suitable qualified person at the applicants expense.

Please let us know if you wish to discuss further.

Regards,
Angus Robertson
Parks and Recreation Planner
Recreation Planning and Facilities

Figure 1- Required Esplanade Reserve

(approximately ~1900m²)

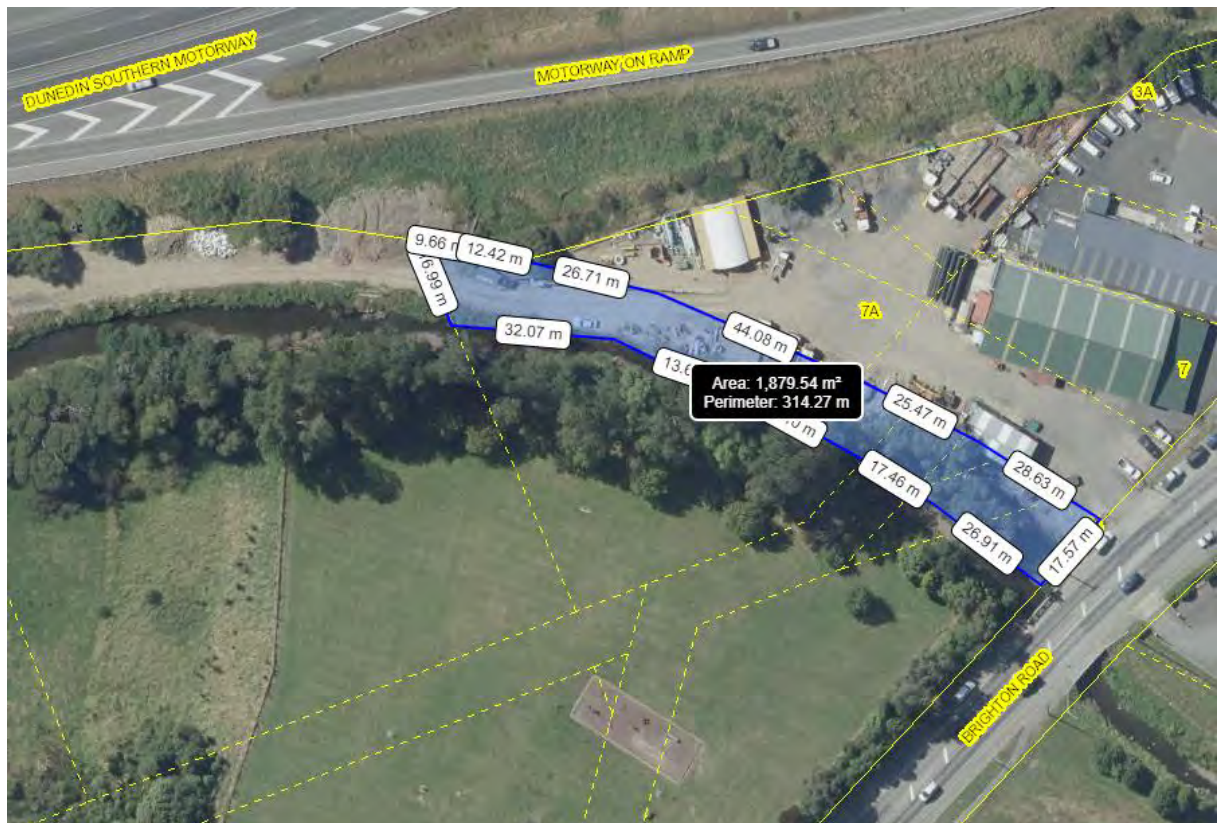
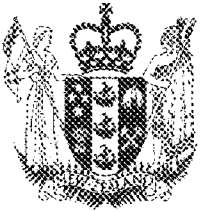


Figure 2 - Suggested area for planting to offset loss of Esplanade Reserve in Figure 1

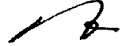
(approximately ~1840m²)





**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**




 R. W. Muir
 Registrar-General
 of Land

Identifier **461127**
Land Registration District **Otago**
Date Issued 16 December 2008

Prior References

OT11D/1349 OT165/163

Estate	Fee Simple
Area	2258 square metres more or less
Legal Description	Section 185 Block V Lower Kaikorai Survey District and Lot 1 Deposited Plan 2282

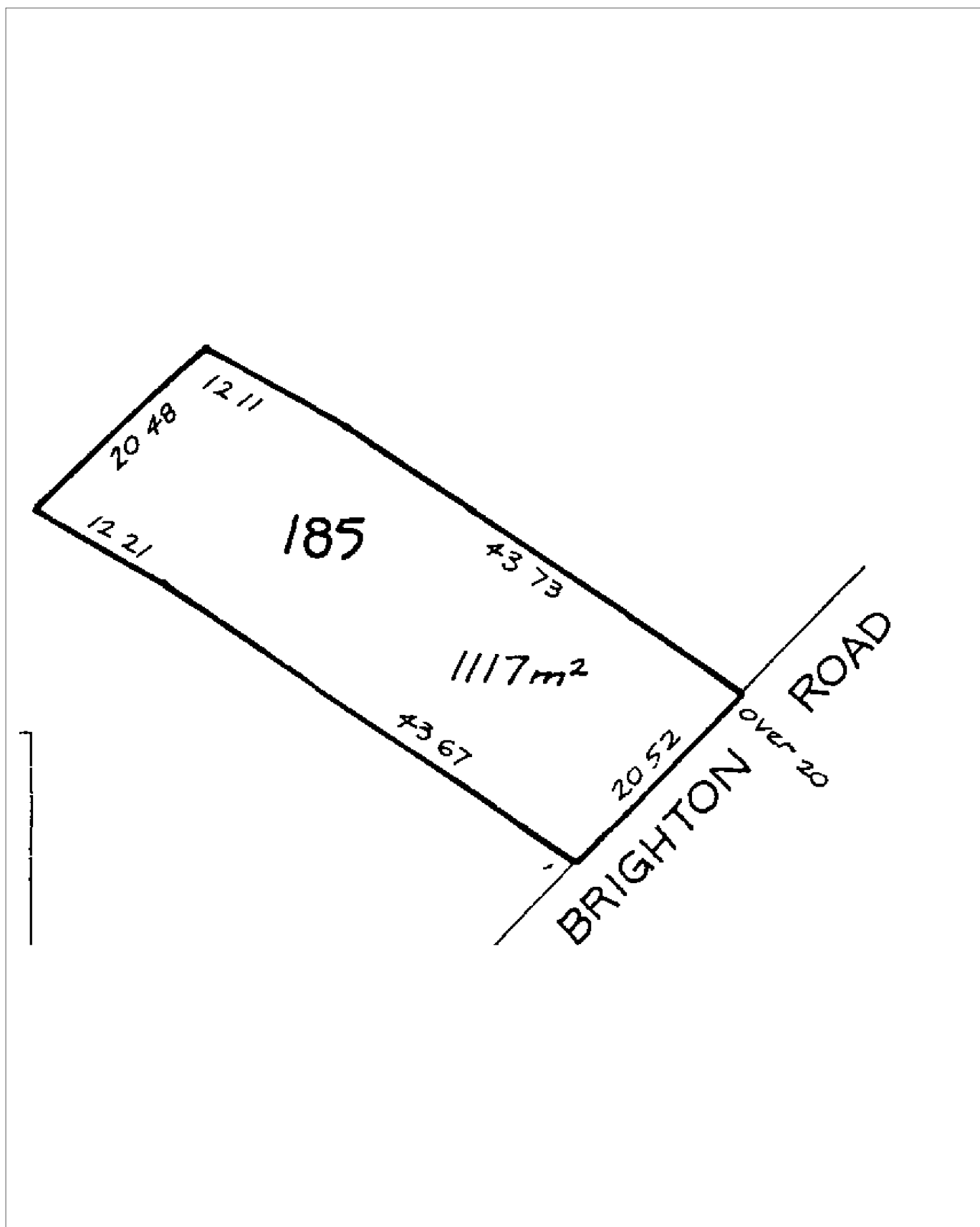
Registered Owners

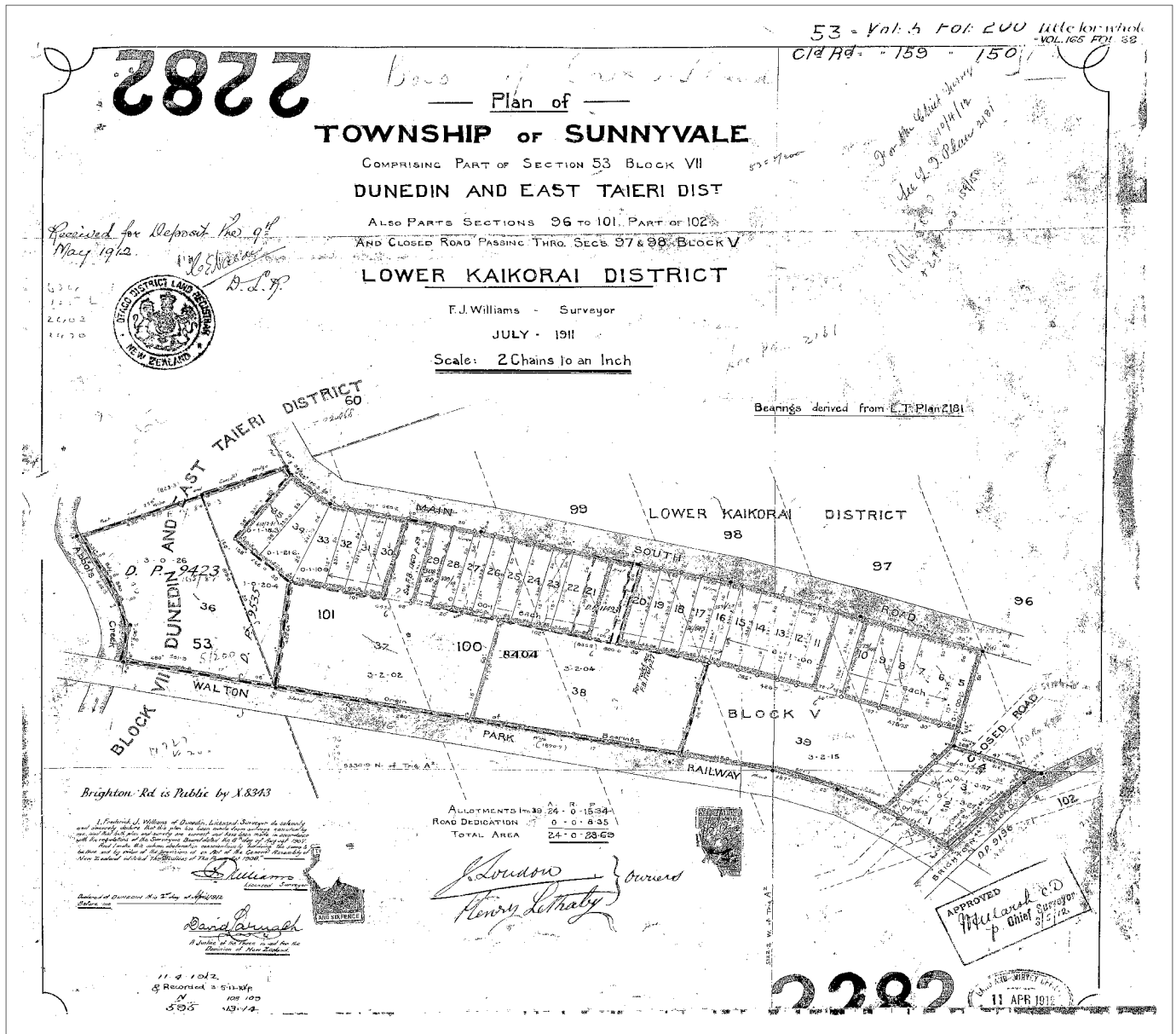
JRJ & ST Clearwater Trustees Limited

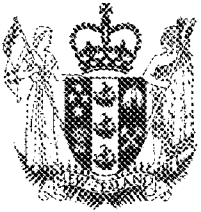
Interests

Subject to Section 8 Mining Act 1971 (affects Section 185 Blk V Lower Kaikorai SD)
 Subject to Section 5 Coal Mines Act 1979 (affects Section 185 Blk V Lower Kaikorai SD)
 11699196.2 Mortgage to ASB Bank Limited - 9.3.2020 at 2:31 pm

Identifier 461127







**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



R. W. Muir
Registrar-General
of Land

Identifier **523445**
Land Registration District **Otago**
Date Issued 06 May 2010

Prior References

231898	234258	8489714.1
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Estate	Fee Simple
Area	2287 square metres more or less
Legal Description	Section 24-26 Survey Office Plan 335606

Registered Owners

JRJ & ST Clearwater Trustees Limited

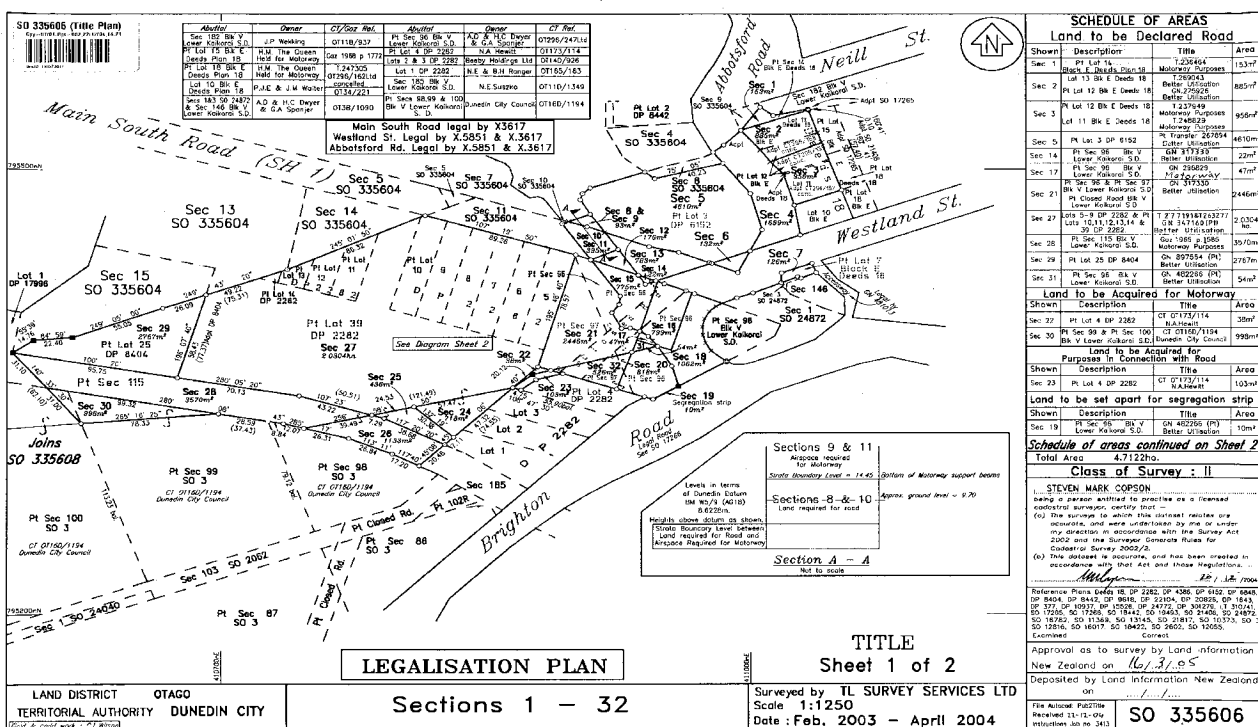
Interests

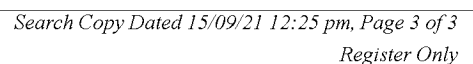
Subject to Part IVA Conservation Act 1987

Subject to Section 11 Crown Minerals Act 1991, except for the minerals in Sections 24- 25 SO 335606 which are excluded from sale and remain in Cancelled CFR OT165/164.

Fencing Covenant in Transfer 8094619.1 - 17.3.2009 at 9:34 am (affects Sections 25-26 SO 335606)

11699196.2 Mortgage to ASB Bank Limited - 9.3.2020 at 2:31 pm







**RECORD OF TITLE
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R. W. Muir
Registrar-General
of Land

Identifier
Land Registration District
Date Issued

OT16D/1193
Otago
15 July 1996

Part-Cancelled

Prior References

OT11C/1275

Estate	Fee Simple
Area	6.0392 hectares more or less
Legal Description	Section 120 Block VII Dunedin & East Taieri Survey District and Part Section 53 Block VII Dunedin & East Taieri Survey District and and Closed Road intersecting Sections 86,87,98,102 and 103 Block V Lower Kaikorai Survey District

Registered Owners

Dunedin City Council

Interests

231749 Proclamation defining the middle line of portion of the Dunedin-Milton motorway - 12.4.1961 at 10.55 am
(affects part 53)

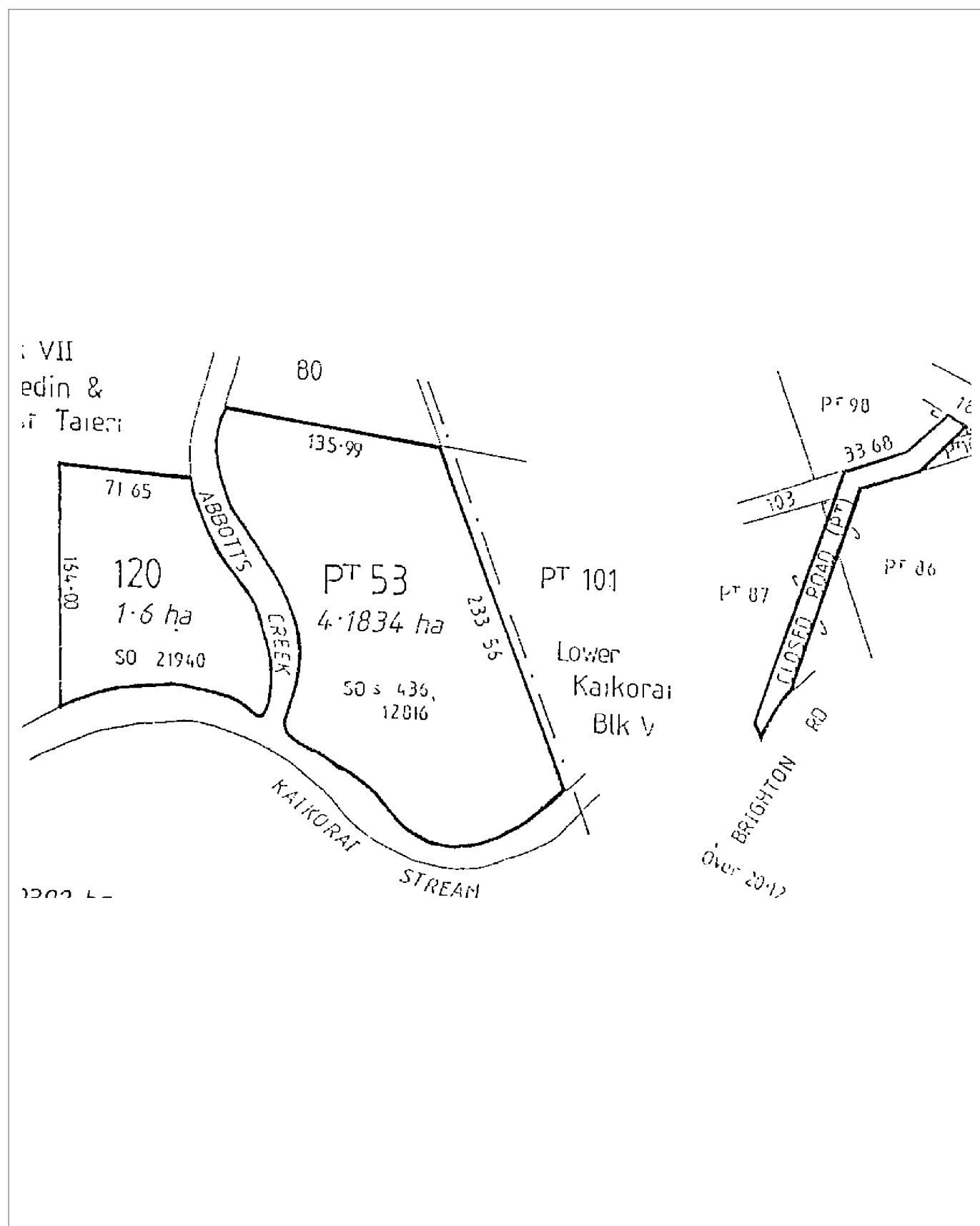
872081.2 Bond pursuant to Section 108(2)(b) Resource Management Act 1991 - 13.12.1994 at 11.31 am

6589188.1 Gazette Notice declaring part within land being Section 3 SO 354282-2154m2 and Section 4 SO
354282-6650m2 to be road,form part State Highway No.1 and shall remain vested in Her Majesty the Queen -
28.9.2005 at 9:00 am

6649830.1 Gazette Notice (2005 p4746) declaring part of Part Section 53 now known as Section 6 on SO 335608
(1447m2) to be taken for severance and remain vested in Her Majesty the Queen from 3.11.2005 - 16.11.2005 at
9:00 am

6659332.1 Gazette Notice delaring part within land being Section 8 SO 335608-3121m2 to be taken for severance
and shall remain vested in Her Majesty the Queen - 23.11.2005 at 9:00 am

Identifier OT16D/1193





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R. W. Muir
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of Land

Identifier
Land Registration District
Date Issued

OT16D/1194
Otago
15 July 1996

Part-Cancelled

Prior References

OT13A/566

Estate	Fee Simple
Area	6.3671 hectares more or less
Legal Description	Section 103 Block V Lower Kaikorai Survey District and Part Section 85-87, 98 Block V and Part Section 99-101 Block V and Part Section 102 Block V Lower Kaikorai Survey District

Registered Owners

The Dunedin City Council

Interests

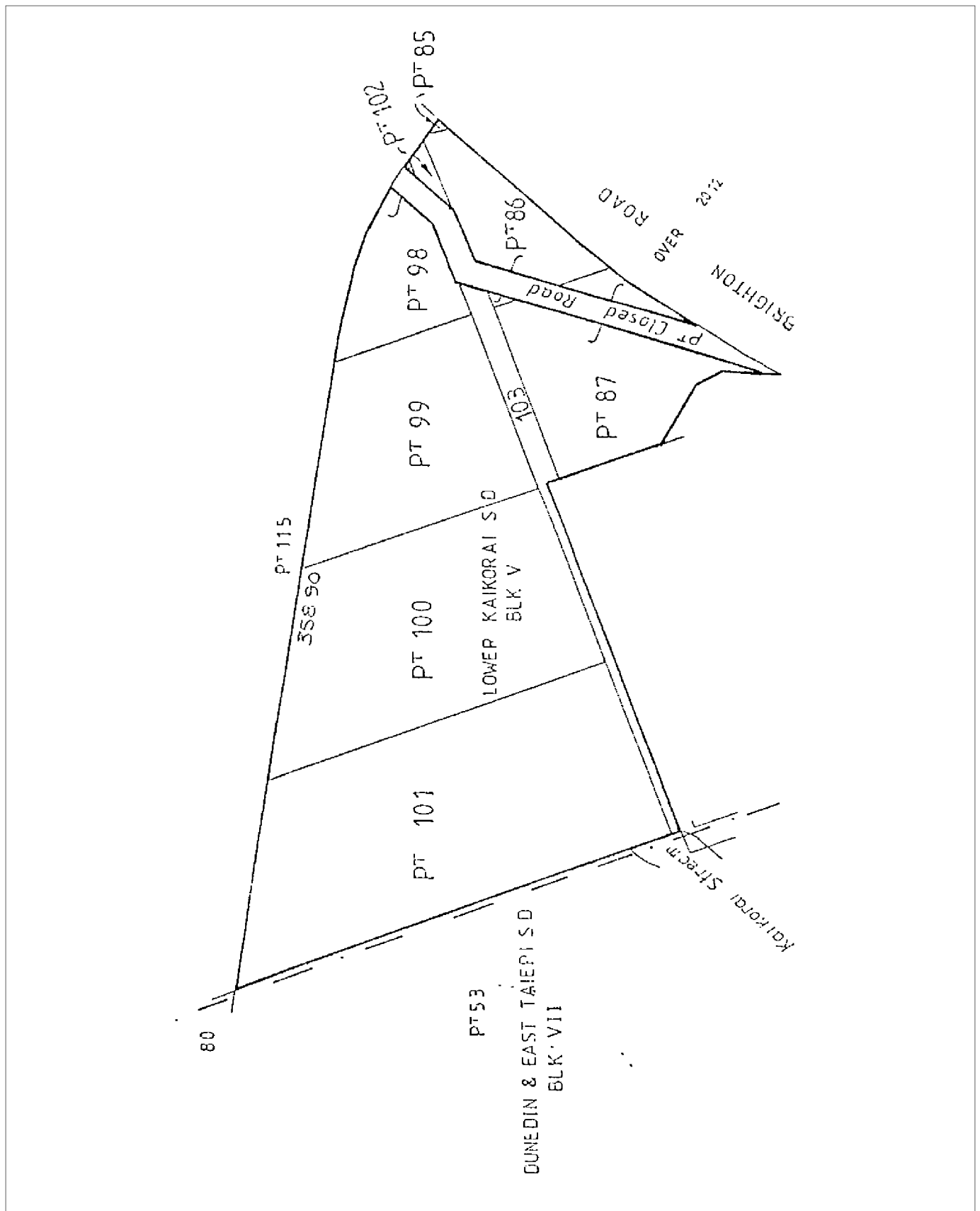
231749 Proclamation defining the middle line of portion of the Dunedin-Milton motorway - 12.4.1961 at 10.55 am
(affects part Section 99, 100 and 101)

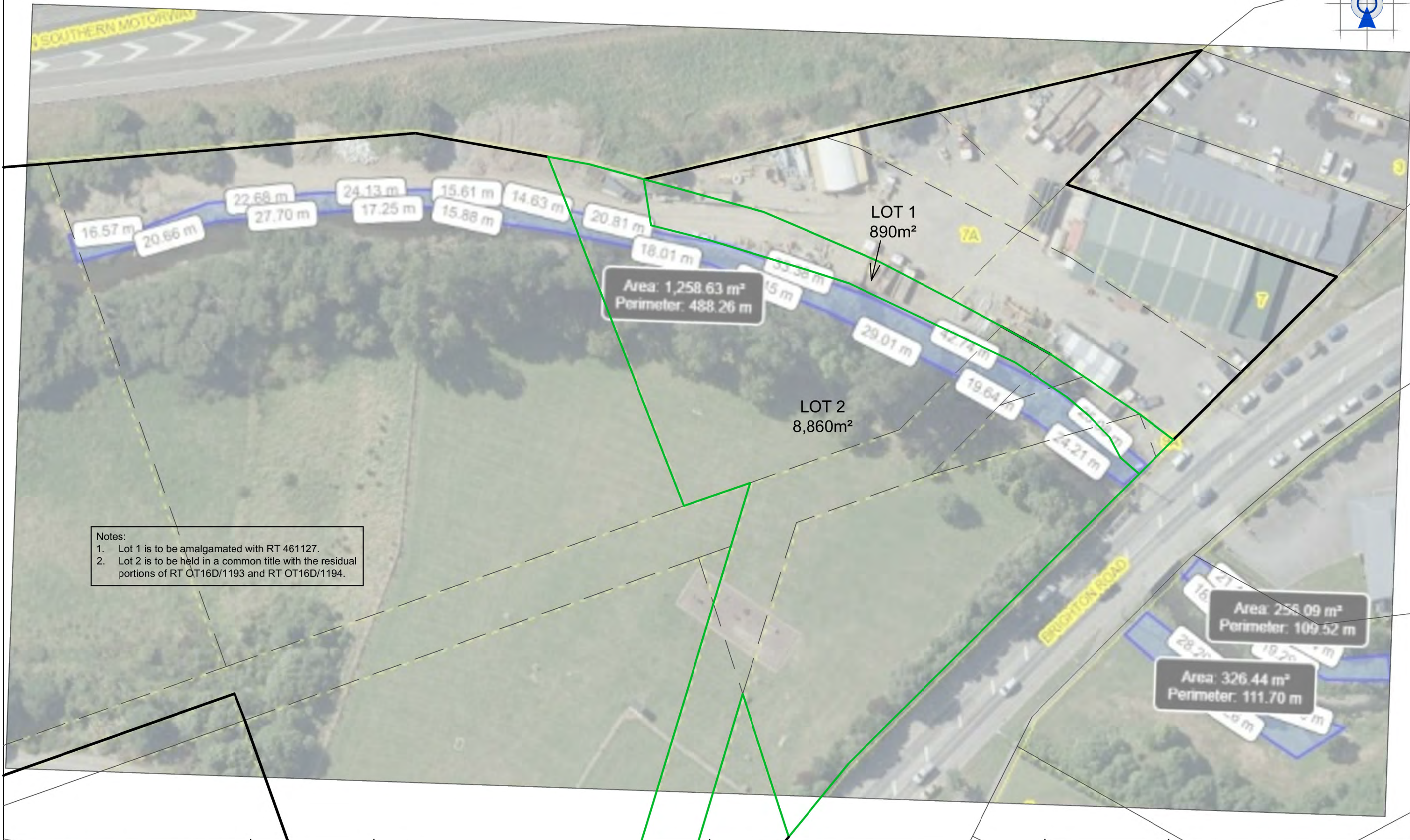
248579 Compensation Certificate pursuant to Section 17 Public Works Amendment Act 1948 - 30.7.1962 at 10.04 am

872081.2 Bond pursuant to Section 108 Resource Management Act 1991 - 13.12.1994 at 11.31 am

6589188.1 Gazette Notice declaring part within land being Section 5 SO 354282-9160m2 and Section 30 SO 335606-998m2 to be road, form part State Highway No.1 and shall remain vested in Her Majesty the Queen - 28.9.2005 at 9:00 am

6659332.1 Gazette Notice declaring part within land being Section 9 SO 335608-1265m2 to be taken for severance and shall remain vested in Her Majesty the Queen - 23.11.2005 at 9:00 am





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Client/Location:
J R J and S T Clearwater Ltd
7 Brighton Road, Green Island

Purpose/Drawing Title:
Proposed Subdivision of Registered Titles
OT16D/1193 & OT16D/1194
PLAN OF PLANTING AREAS

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Approved by:	KAB		
Job Ref:	D17155	Sheet No:	Revision No:
		3	A
			Date Created:
			12/11/2021

COUNCIL OFFICERS' EVIDENCE



Memorandum

TO: Phil Marshall, Resource Consents
Robert Buxton, Consultant Planner

FROM: Elizabeth Schonwald, Parks and Recreation

DATE: 2 May 2022

SUBJECT: **SUB-2021-252_7, 7A, 9A BRIGHTON ROAD**

Kia ora,

Thank you for the opportunity to comment on the above subdivision consent application. The proposed application seeks to subdivide off part of Dunedin City Council (DCC) land that is zoned recreation to dispose of it to J R J and S T Clearwater Trustees Limited (the Clearwaters) who own the adjacent industrial property to the north. The property is occupied by Clearwater Civil, a civil earthworks and construction contractor. Clearwater Civil encroaches onto the DCC land with its industrial activities, a legacy from the previous owner. Clearwater Civil's industrial use includes activities associated with civil earthworks and construction contractor depot including hardstand, part of a workshop and stockpiling. Land use consent is also being sought to legalise these activities on recreation zoned land.

Proposed Lot 1 is the 890m² strip of land which DCC is disposing off, it lies to the north of Kaikorai Stream and borders 7 and 7A Brighton Road both owned by the Clearwaters. Proposed Lot 1 will be amalgamated with 7 Brighton Road, with the balance land Proposed Lot 2 to be held in common title with the remaining allotment of DCC land (9 and 9A Brighton Road).

The conservation values identified for Kaikorai Stream in Appendix 10C of the Dunedin City Council's Second Generation District Plan (2GP) are "*Mitigating flooding and erosion. Lower reaches have tidal influence and high conservation value.*"

The Kaikorai Estuary is within the site and is protected under the 2GP with the following overlay maps:

- Kaikorai Estuary Urban Biodiversity Management Area (UBMA04)
- Area of Significant Biodiversity Value, Edge of Kaikorai Estuary, Estuary and Lagoon (C106)

The Kaikorai Estuary is also protected under the Otago Regional Plan: Water (RPW). It is identified as "Kaikorai Lagoon Swamp" in schedule 9 as a Regionally Significant Wetland. Kaikorai Stream (Kaikara awa) is noted under Schedule 1D of the RPW as holding values for Kāi Tahu.

Dunedin City Council (DCC) Parks and Recreation Services (PARS) have an interest in the resource consent application for the property as there is a statutory requirement for the provision of esplanade reserve along the Kaikorai Stream. Shand Park which PARS manage is also located to the south of Kaikorai Stream, directly across the stream from Proposed Lot 1.

The applicant had pre-application discussions with PARS prior to making the application this was without prejudice and involved a suggestion that the applicant plant an area equal in size to that required for the esplanade reserve across both the proposed reduced width esplanade reserve and DCC land adjacent to the stream. Further conversations were had with Aalbert Rebergen the Council's Biodiversity Officer upon receipt of the application he identified that at least a width of 10m is needed to support biodiversity management, a reduction in width to 5m would be the absolute minimum to ensure the protection of stream's ecological values. A site visit with the applicant and Council's consultant planner indicated that the stream appeared to be undercutting the bank which caused concerns in terms of the subsequent reduction in the esplanade reserve width as the bank is further eroded by the stream.

The protection of the margins of the waterways helps to conserve environmental values and provides opportunities for public access and recreational use, as provided for in Section 6(a), (c) and (d) of the RMA 1991. The Kaikorai Stream has a total catchment area of 55,4km² and is approximately 14.5km long flowing from Kaikorai Valley to the Pacific Ocean¹. The lower catchment of the stream prior to the entry to Kaikorai Estuary is within the site and it has poor water quality. The Kaikorai Stream flows through both residential and industrial areas, the water quality is compromised by the many stormwater outfalls that discharge into the stream². The low quality of the water is indicated by the number of bacteria (E. coli) identified in the water, lack of clarity and high turbidity of the water, and the levels of nitrogen in the water. It is these factors along with the low number of macroinvertebrates that indicate the poor health of the stream. It is because of Kaikorai Stream's poor health and the significance of the Kaikorai Estuary that PARS wishes to see an esplanade strip provided to help to support and improve the health of the stream by increasing riparian planting along the banks of the stream and providing some ecological protection to the stream.

Ensuring our parks, natural landscapes, flora and fauna are treasured by the community is a key objective of the Dunedin City Council Parks and Recreation Strategy (2017). Although PARS acknowledge that access by the public beyond Shand Park may be presently

¹ Land, Air, Water Aotearoa (LAWA) - Kaikorai Stream - <https://www.lawa.org.nz/explore-data/otago-region/river-quality/kaikorai-stream/>

² Land, Air, Water Aotearoa (LAWA) - Kaikorai Stream at Brighton Road - <https://www.lawa.org.nz/explore-data/otago-region/river-quality/kaikorai-stream/kaikorai-stream-at-brighton-road/>

limited due the existing activities occurring on the land. The provision for public access is to safeguard public access for the future, no matter the ownership of the land therefore ensuring the possibility for a continuous walkway along the stream and through the estuary. An esplanade will also provide the opportunity to not only protect the biodiversity of the river from the immediate effects of adjacent industrial activities, but also enable the ability for biodiversity monitoring and water quality testing.

Enhancement of the waterways through the removal of pest plants, and planting of natives would improve the waterway's quality and potential for biodiversity to thrive.

PARS understand that the applicant wishes the fence erected in Proposed Lot 1 to remain at its current location to make the purchase of the land viable and therefore PARS offer the following suggestions to mediate the reduction in esplanade width.

1. The applicant/property owner manages and treats all stormwater on site to prevent contaminated water from the site entering the stream.
2. No vehicle or equipment servicing; and storage or disposal of contaminants, e.g. diesel fuels, oils, etc to occur within 20m of the northern bank of the stream.
3. The provision of a 5m wide esplanade strip on the northern bank of the stream across the entire site being subdivided, this strip would be for the purpose of improving biodiversity and conservation values and not to provide public access. There would be an expectation that the applicant would plant from the stream edge up to the fence line with appropriate native species. A planting plan to be provided to PARS for approval first. The 5m width would take the strip beyond the fence, there would be an expectation with time or a future property sale this fence would be moved to be consistent with the esplanade strip's northern boundary and the rest of the esplanade strip be planted consistent with the approved planting plan.
4. The provision of a 15m wide esplanade strip along the southern bank of Kaikorai Stream within the site for the purpose of biodiversity, conservation, and public access.

Please do not hesitate to contact us if you wish to discuss the above further.

Regards,

Elizabeth Schonwald

Parks and Recreation Planner

Parks and Recreation Services

Wendy Collard

From: Kurt Bowen <Kurt.Bowen@ppgroup.co.nz>
Sent: Tuesday, 24 May 2022 12:17 p.m.
To: Robert Buxton
Subject: RE: MEMO SUB 2021-252_7 7A 9A Brighton Road_
Attachments: MEMO SUB 2021-252_7 7A 9A Brighton Road_.pdf

Hi Robert

Thanks for sending through the memo from PARS in respect to the Brighton Road application.

I have reviewed this with the applicant, and we respond as follows-

1. Regarding Point 1 on Page 3, the applicant is prepared to agree with this suggestion.
2. Regarding Point 2 on Page 3, the applicant is not prepared to agree with this suggestion. The land is currently used for industry, and it is the applicant's desire to continue to use it in this manner, including for the vehicle and equipment servicing and the storage and disposal of contaminants. We feel that by agreeing to Point 1 and ensuring that all stormwater from the site is properly captured and treated prior to discharge, the second point is not necessary (and contaminants exposed to the land within 2m of the stream will be captured and treated by the stormwater system).
3. Regarding Point 3 on Page 3, the applicant is not prepared to agree with this suggestion. The applicant would agree (as previously proposed) to an esplanade reserve that extends between the stream edge and the existing fence, but not beyond the fence. Any extension of this parcel beyond the fence has undesirable consequences in respect of a) limiting the use of the land beyond its current ability to be used, and b) a negative impact on the value of the land for future uses and/or transactions. The applicant is prepared to plant out the space between the stream edge and the fence, as per PARS's expectations. The applicant considers that the offer to plant an area of land that is of a size equivalent to a full-width esplanade reserve on the true-right side of the stream, at an alternative location (in this instance on the eastern side of Brighton Road) is an acceptable offsetting proposition, and one that will ultimately provide a better outcome in terms of biodiversity and public amenity.
4. Regarding Point 4 on Page 3, the applicant is prepared to agree with this suggestion. However, just to clarify, it is our understanding that the 'site' as mentioned in this suggestion is confined to the extent of the Proposed Lot 2 as shown on the subdivision scheme plan (i.e. not to total extent of the underlying title).

I trust that this information is helpful.

Please let me know how you would like to progress this from here. Perhaps we can now schedule the esplanade reserves hearing?

Regards
Kurt

Kurt Bowen

Principal

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E kurt.bowen@ppgroup.co.nz

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From: Robert Buxton <robert@buxtonwalker.co.nz>
Sent: Tuesday, 3 May, 2022 9:40 PM
To: Kurt Bowen <Kurt.Bowen@ppgroup.co.nz>
Subject: FW: MEMO SUB 2021-252_7 7A 9A Brighton Road_

Hi Kurt

Please see comments from Elizabeth. Please advise if you wish to proceed on this basis. Happy for you to talk directly with Elizabeth if need be.

Kia ora, Robert

Robert Buxton
 Buxton & Walker Limited
 Mobile 0278007452

From: Elizabeth Schonwald <Elizabeth.Schonwald@dcc.govt.nz>
Sent: Monday, 2 May 2022 12:52 PM
To: Robert Buxton <robert@buxtonwalker.co.nz>
Cc: John Brenkley <John.Brenkley@dcc.govt.nz>; Phil Marshall <Phil.Marshall@dcc.govt.nz>; Lincoln Coe <Lincoln.Coe@dcc.govt.nz>
Subject: MEMO SUB 2021-252_7 7A 9A Brighton Road_

Hi Robert,

As discussed this morning please find attached PARS comments for the above application. We are happy to meet and discuss it further with yourself and the applicant.

Many thanks,
 Elizabeth



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