
TO: Hearings Committee

FROM: Nicola Petrie, Planner

DATE: 27 April 2023

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2021-619
317 Chain Hills Road, Taieri
JESSICA-LEA THOMPSON & JOE JUNIOR TAYLOR

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 27 April 2023. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] In the assessment that follows, I have concluded that the environmental effects of the proposed activity will be no more than minor.
- [3] However, Policy 16.2.1.7 of the Proposed 2GP provides a very specific directive about avoiding residential activity on sites that do not comply with the density provisions for the zone, and accordingly there is a clear policy direction that would not support the granting of this type of proposal unless it meets a very limited set of circumstances. In this case the application advances the argument that the residential activity is supported by the policy because it would be associated with *long term land management or capital investment that will result in: ... a significant contribution to the enhancement or protection of biodiversity values.*
- [4] Based on the ecological advice I have received, I am minded to conclude that the proposed activity has the potential to meet the above criteria if the ecological enhancement project is successfully implemented.
- [5] As a result, I have concluded that the proposal to establish residential activity on the site should be **approved** subject to conditions.
- [6] I have further recommended that the Panel consider the necessity of a bond and/or land covenant to ensure the implementation of the ecological restoration project and long term protection of the site.
- [7] The s95 notification assessment has been completed by a consultant planner, Ms Liz Hislop. I concur with her analysis of the proposal and have largely adopted her assessment for the purpose of this report.

DESCRIPTION OF PROPOSAL

- [8] Resource consent is sought to construct a residential unit and the associated earthworks required for the building platform, landscaping and access. Planting of native vegetation is to be undertaken in conjunction with this activity to enhance biodiversity.
- [9] The proposed dwelling will have a floor area of 252m², with this footprint including an attached single garage, three bedrooms and office/ guest room. It will be a maximum height of 5m above existing ground level.
- [10] A side/ rear boundary setback breach is proposed for the southern internal boundary.
- [11] The colour palette for the proposed dwelling will draw from the surrounding landscape but colours have not been finalised. There is intention to have a roof colour with a light reflectance value of 15% or less and wall colour with a light reflectance value of 30% or less.
- [12] Access will be off Chains Hill Road, the entry and exit will utilise separate vehicle crossings to form a V shape to allow separation when entering and exiting the property, but the branches of the formation will meet up for one vehicle track within the property.
- [13] Earthworks for the building platform will involve a 14m³ of cut and 131m³ of fill. This will involve a maximum cut depth of 0.6m and a maximum fill depth of 1.4m. The earthworks for the driveway access will be a total volume of 324m³, with a maximum depth of 0.3m.
- [14] A proposed shed has been included in the plans and will have a floor area of 14m by 6m. The shed will meet all development performance standards.
- [15] Exterior lighting of the buildings will be low glare, down lighting and no lighting is planned for the vehicle access.
- [16] A copy of the application, including plans is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [17] The site is zoned Rural – Hill Slopes and is an area of 6.1721 hectares. The site is irregular in shape, with a narrow access leg fanning out to a wider irregular shape mid-site. The subject site is legally described as Lot 2 DP 23164, held in record of title OT15B/171.
- [18] The property is situated on the north/north-western facing slopes of Chain Hills, overlooking Wingatui and northern Taieri Plains. The existing vehicle entrance to the site is off Chain Hills Road and located within the plateau ridge part of the hill. A broad secondary ridge covers large parts of the site near the western boundary. A gully occupies area near the eastern boundary. The lower (northern) parts of the site fall steeply toward residential Wingatui.
- [19] Land cover within the site comprises of a mix of pasture, exotic scrub and regenerating bush on the steeper area within the site, including the gully. Exotic shelterbelts (Macrocarpa and Eucalyptus) are also a feature of the site.

BACKGROUND TO THE APPLICATION

- [20] The site was created in 1992 as a result of subdivision RMA-1992-355139. This subdivision divided a 51.8 ha property (in RT OT14D/345) into 10 sites ranging in size from 2.0750 ha to 14.4270 ha, with a further 3530m² lot amalgamated with an adjoining title.

- [21] The present application for land use consent was placed on hold on 29 November 2021 under s92(1) of the RMA. Further information was required from the applicants and simultaneously it was requested that written approval be provided from the owners and occupiers of a number of properties.
- [22] Further information was provided by the applicant in stages throughout 2022, with the final information being received on 10 November 2022. Further information was received as follows on the specified dates:
- 10 Nov 2022, confirmation from Dunedin Airport and the airport operations have no objection under Designation 274¹ and that the residential unit and proposed shed are below the 1.2% flight fan and will pose no operation issues for flights;
 - 21 Oct 2022, updated concept plans submitted in pdf format;
 - 10 Oct 2022, updated biodiversity restoration plan submitted;
 - 4 Oct 2022, Landscape assessment from Mike Moore, Landscape Architect submitted;
 - 26 Sep 2022, Driveway design and access information;
 - 28 Aug 2022, Information with respect to Otago Regional Council regulations with regards to wastewater and stormwater, septic tank plan and driveway information; and
 - 12 Jul 2022, guidance from FENZ re alternative water supply for fire fighting purposes Fire Sprinkler System Specs, Soil Contamination Report, Prelim drawings from architect, updated Biodiversity plan from Ahika Consultancy and Preliminary Geotech Report from Geosolve.
- [23] Written approvals were provided on 16 December 2022 from two owners/ occupiers (329 and 307 Chain Hills Road), but approvals from the other owners/occupiers requested (297 Chain Hills Road and 34 Paterson Road) were not provided. The applicant subsequently requested that the application continue to be processed on this basis that written approvals are not provided, which meant that either limited notification OR public notification of the application was required.
- [24] In addition, it is noted that the application as originally submitted proposed a residential unit to be setback at least 20m from internal boundaries. As part of the further information received plans were provided that show the residential unit proposed will be located 10m from the southern boundary. The owners of 307 Chain Hills have signed off on this.

REASONS FOR APPLICATION

- [25] Dunedin currently has two district plans: the operative Dunedin City District Plan, and the Proposed Second-Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [26] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act

¹ Dunedin International Airport Limited

Purpose Take-off the Approach Fan, Transitional (side) Surface, Horizontal and Conical Surfaces – Airport Approach and Land Use Controls.

1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

- [27] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

Operative District Plan

- [28] The subject site is zoned **Rural** in the Operative District Plan. Chain Hills Road is classified as a Local Road in the Plan's Roading Hierarchy.
- [29] The relevant rules of the Operative Plan for this proposal have been superseded by those of the proposed 2GP and are deemed inoperative under Section 86F of the Resource Management Act 1991. Accordingly, the activity status of the proposal has not been assessed any further under the rules of the Operative Plan.

Proposed 2GP

- [30] The subject site is zoned **Rural – Hill Slopes**. The following layers are annotated on the maps:
- Designation D274 – Dunedin International Airport Limited – Take off and Approach Fan, Transitional (side) Surface, Horizontal and Conical Surfaces – Airport Approach and Land Use Controls. The Dunedin Airport Flight Fan is overlay that **applies to the entire site** and numerous other properties.
 - Designation D419 – Kiwirail Holdings Limited – Main South Railway Purposes. This designation relates solely to the route of the railway tunnel for the main south line which crosses under the **east extremity of the site only** and has no bearing on the proposal.



Image: 2GP maps identifying zones and overlays

[31] The proposal falls under the definitions of Residential Unit² and Residential Activity³.

Land use activity

[32] The proposed land use requires consent as a **non-complying** activity pursuant to Rule 16.5.2.3. because the site size is smaller than the 15 hectares required for the first residential activity on a site in the Rural – Hill Slopes zone, and none of the exceptions to the density requirement as outlined in the rule apply in this case.

Development activity

[33] The proposed dwelling will contravene Rule 16.6.10 Setbacks. Rule 16.6.10.1 (a)(i) Boundary setbacks states that the minimum setback from side and rear boundaries within sites held in separate ownership is the greater of either: i) 20m or ii) a setback that provides a 40m separation from any residential building on any adjoining site.

[34] The proposed dwelling will be setback 10m from southern internal boundary at the closest point. This breach is assessed as a **restricted discretionary** activity.

² For the purposes of determining density, a **residential unit** is any building or part of a building, that is capable of being used as a self-contained residence with sleeping, cooking, bathing and toilet facilities.

³ The category of land use activities that consists of: supported living facilities (including rest homes, retirement villages and student hostels) **standard residential** (including papakāika); and working from home.

City-wide activities

- [35] The proposed earthworks are unable to meet performance standards for small scale earthworks scale threshold. The combined earthworks will be a volume of 469m³ is required to construct a building platform and the driveway. A breach of small scale earthworks performance standards is classified in the rules as large scale earthworks and is assessed as a **restricted discretionary** activity.

National Environmental Standards

- [36] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [37] The site is not listed as a HAIL site in the Otago Regional Council database. A search of the Dunedin City Council records has been undertaken (HAIL-2022-73) and has not identified any evidence of past or present HAIL activities on the subject site. The report does note that previous and existing farming activity may include HAIL activities that the Council holds no records about, such as agrichemical use, fertiliser bulk storage, livestock dips/spray races, persistent pesticide storage/use, storage tanks for fuel, farm landfills. However, no evidence has been identified of a history of such activity within the site.
- [38] On the basis of the current available information, it is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the subdivision.
- [39] As such, the National Environmental Standard is not applicable to the proposal.

OVERALL STATUS

- [40] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.
- [41] In this case, there is more than one rule involved and two components of the application – the residential activity (being the new dwelling) and the building itself not being setback the required amount from side boundary. The proposed residential activity is considered to be a non-complying activity, and the building breaching the side/rear yard setback is considered to be a restricted discretionary activity. As both aspects are part of the one land use consent, these components should be bundled and the application assessed as a **non-complying** activity.

NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LAND 2022

- [42] The National Policy Statement for Highly Productive Land (NPS-HPL) was released recently and came into effect on 17 October 2022, following lodgement of this application. This NPS is about ensuring the availability of New Zealand's most favourable soils for food and fibre production, now and for future generations. The objectives and policies and implementation clauses have immediate legal effect, and thus Council must take relevant

provisions into account when considering consent applications and plan changes. The NPS contains direction around urban and rural lifestyle rezoning and subdivision, use and development of highly productive land.

[43] Highly Productive Land (HPL) is defined in cl 1.3 of the NPS-HPL as:

'...land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5.(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land).'

[44] Clause 3.5(7) is currently relevant. In Dunedin, land currently treated as HPL as per cl 3.5(7) of the NPS is identified on Dunedin City Council Data Maps.



Image: Data map showing Land use Capability 3 – Good land with moderate limitations to arable use.

[45] The land within the site subject to the HPL comprises a small portion, of approximately 1367m² in area at the road frontage. This land does not comprise the location of the proposed dwelling, and the proposed activity in relation to this part of the site (HPL) is for vehicle access and installation of some services.

[46] Under the NPS-HPL, Council must (among other matters):

- Avoid subdivision of HPL unless certain criteria are met, such as an application demonstrating proposed lots will retain overall productive capacity of the subject land over the long term (Clause 3.1(a)(a)).

- Avoid, if possible, or otherwise mitigate, any potential cumulative loss of the availability and productivity capacity of highly productive land in their district (Clause 3.8.(2)(b)).
- Avoid the inappropriate use or development of HPL that is not land-based primary production (Clause 3.9). A list of exceptions is given such as providing for activities supporting land based primary production (Clause 3.9(2)(a)); or it is a small-scale or temporary land use activity that has no impact on the productive capacity of the land (Clause 3.9(2)(g)).

[47] Land-based primary production is defined as:

‘...production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.’

[48] While the NPS – HPL was not in effect at the time of the application’s lodgement, it came into effect on 17 October 2022 and therefore must be considered during the assessment of this application. The area within the subject site classified as highly productive land is too small on its own for any productive potential for farming purposes. It is surrounded by land within the rural residential zoned properties held in different ownership. However, it is unlikely to result in cumulative loss of productivity capacity or introduce reverse sensitivity issues.

NOTIFICATION AND SUBMISSIONS

[49] Written affected party approvals were received from parties in the following table:

Person	Owner	Occupier	Address	Obtained
Anthony Horts & Bernie Don	✓	✓	307 Chain Hills Road	✓
Nicola Jean Clarke	✓		329 Chain Hills Road	✓

[50] The application was limited notified on 23 February 2023. Copies of the application were sent to those parties the Council considered could be directly affected by the proposal. Submissions closed on 22 March 2023. Two submissions were received by the close of the submission period. These both opposed the development.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Sam and Rebecca Guest	Oppose	Concerns were expressed that there is no clear information relating to setbacks and height in relation to boundary⁴. Significant investment and efforts to achieve conservation on their own property potentially undermined by granting of residential activity on the subject site. Concerns relate to effects on visual amenity, light and noise and reverse sensitivity. The proposed residential dwelling will interrupt the skyline, will be visible from their dwelling, playground and campground they have created on their site. Concerns about privacy⁵ also raised. Noise and light from residential activity will threaten the sanctuary created within their site and fundamentally disagree with conclusions drawn in s95 report around permitted baseline of rural activities being comparable to a residential activity.	Yes

⁴ There are no height in relation to boundary performance standards for the Rural Zone.

⁵ Whilst no explicitly provided for in the plan, reverse sensitivity and rural character do embody key characteristics sought to be protected.

		Application has suppressed the true impact of the building envelope in particular on their property. Previous concepts saw the dwelling benched. More recent drawing show a reduced setback to 10m and a cut of only 0.6m. Do not object to a residential dwelling on this property, but have an expectation that setbacks will be adhered to and the dwelling more embedded in the slope which will be more sympathetic to the receiving environment. They seek the following three actions: a pause the application to enable building envelope lines to be erected so the visual impact/ bulk and location of the dwelling can be assessed and considered. Then submitters and council/ hearing committee can adequately consider the impact of the activity with more submissions being made. Negotiation of mitigation measures could then be discussed and agreed upon. Or, the application be modified to accommodate and address the concerns outlined in the submission. Or, the application be declined.	
Michael Grant Rogan and Kristina Lucan and Flamingo Trustee Limited	Oppose	Concerned that not all affected parties were approached from the beginning and not adequate information provided when affected party approval sought. Initially an aerial photo with an "x" indicated the building platform. The applicant made contact several times last year and once they had read the large application they disagreed with the Ahikā Consulting report's conclusions. Reports of 8-9 native species were reported by Ahikā which is consistent with previous owner's endeavours, but the report then goes on to say currently there is low ecological value. The report identifies species likely in the original forests but recommends planting of species considered to be at risk or threatened either Nationally Vulnerable or Naturally Uncommon. Questions whether this approach meets the motive of policy 16.2.1.7 which is seeking to establish significant contribution to the enhancement or protection of the biodiversity values. Concludes that planting more of the surrounding flora not significant enhancement. Insufficient evidence of investigation that the site meets this exception of policy Y.ii. The report lacks certainty and is a recommendation only for what could be achieved subject to landowner's funds and resources. In consistencies pointed out in the application and then further information.	Yes

[51] In accordance with Section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person. Accordingly, in this report consideration of any adverse effects on the properties at 307 and 329 Chain Hills Road is not relevant.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[52] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) Any positive or adverse effect; and*
- b) Any temporary or permanent effect; and*
- c) Any past, present, or future effect; and*
- d) Any cumulative effect which arises over time or in combination with other effects—*
regardless of the scale, intensity, duration or frequency of the effect, and also includes –
- e) Any potential effect of high probability; and*
- f) Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[53] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

[54] In this situation the permitted baseline comprises residential activity at a density of 15 hectares for the first residential activity per site.

[55] The rule provisions for development of farm buildings in Rural zones (where, as in this case, the land is not subject to any overlay zone) are reasonably permissive. Any number of sheds and other structures for farming purposes may be erected on the site, subject to compliance with the performance standards for development activities, and the relevant citywide rules such as the provisions for small scale earthworks. These structures could potentially be built at almost any location within the site, subject to the setback requirement in Rule 16.6.10. While such buildings could be up to 10m high it is hard to make any meaningful determination of the scale and effects of such development, as it relies upon a judgement of what may be fanciful for farming activity on a property of this size. Notwithstanding this, it can be said with certainty that structures associated with rural activities could be erected on the site.

[56] It is considered that this is the appropriate baseline against which the activity should be considered. As a result, it is the effects arising from the proposal, beyond the permitted baseline, that are the crucial elements for consideration.

Receiving Environment

[57] The existing and reasonably foreseeable receiving environment is made up of:

- The existing environment and associated effects from lawfully established activities;
- Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
- The existing environment as modified by any resource consents granted and likely to be implemented; and
- The environment as likely to be modified by activities permitted in the district plan.

- [58] For the subject site, the existing receiving environment comprises a small block of rural land utilised for small scale grazing, conservation activities and vegetable gardening. The reasonably foreseeable receiving environment comprises the same or similar activities. The site is not of a sufficient size or appropriate topography to envisage any particularly serious or intensive productive activities taking place, although it is always possible.
- [59] For adjacent land, the existing and reasonably foreseeable receiving environment comprises rural and rural residential blocks and General Residential 1 land down the slope on Paterson Road.
- [60] It is against these that the effects of the activity, beyond the permitted baseline, must be measured.
- [61] There are a number of developments in close proximity to the site:
- SUB-2022-131 which has been approved to create twelve residential lots on the site 41 Paterson Road, Wingatui. This was approved on the 13 February 2023.
 - There is a staged subdivision of ten residential lots on 17 Pomeria Way, Mosgiel. Stage 2B was approved on 30 August 2021.

Assessment Matters/Rules

- [62] Consideration is required of the relevant assessment rules in the Proposed 2GP, along with the matters in any relevant national environmental standard. In carrying out this assessment, no regard has been given to any trade competition or any effects of trade competition.

Proposed 2GP

- [63] The assessment of effects is guided by the assessment matters in Sections 16 (Rural Zones), 6 (Transportation), 9 (Public Health and Safety), 11 (Natural Hazards) of the Plan. Accordingly, assessment is made of the following effects of the proposal:
- Biodiversity
 - Rural character and landscape values
 - Productive soils
 - Natural Hazards
 - Transportation;
 - Infrastructure and Public Health and Safety
 - Cumulative Effects;

Biodiversity Values

- [64] Biodiversity values are a key matter requiring assessment. Policy 16.2.1.7 is directive and states:

Avoid residential activity in the rural zones on a site that does not comply with density standards of that zone, unless:

X. it is the result of a surplus dwelling subdivision; or

Y. the residential activity will be associated with long term land management and/or capital investment that will result in:

- i. significant positive effects for rural productivity; and/or*
- ii. a significant contribution to the enhancement or protection of biodiversity values.*

- [65] The proposal is not the result of a surplus dwelling subdivision therefore Clause X. is not applicable. As such, turning to clause Y when considering the use of rural land for residential activity, the contribution to the enhancement or protection of biodiversity values is relevant.
- [66] A restoration plan has been provided from Ahikā Consulting (ecological consultants) in October 2022 (updated third version). This restoration plan has been reviewed by Ms. Zoe Lunniss, Biodiversity Advisor for DCC, her comments are below:

Site

1. *Two sites were selected for restoration (based off guidance from Richard Ewans), Area 1 (0.5 ha) and 2 (2.2 ha) (Figure 1). Both areas are dominated by gorse with some emergent natives. No indigenous fauna was observed at the site however several native birds and skink species are common in the wider Chain Hills area.*

Ecological Restoration Plan

2. *According to rule 16.12.5.1.AB, in assessing whether the proposal meets Policy 16.2.1.7.Y.ii Council is required to consider the ecological context of the site and the proposal at the local level.*
3. *The restoration plan included an assessment of the restoration site based on the criteria laid out in A1.2 of the 2GP. There were no noteworthy values identified within Area 1 and 2.*
4. *The restoration plan proposes the transition of gorse shrubland to native vegetation representative of the area through planting 25 m² 'pockets' with indigenous species (around 416 plants per pocket). Gorse acts as a nursery plant for native seedlings and can help protect them as they grow. Ideally, indigenous plantings will reproduce and eventually outcompete the gorse. Control of prolific and/or problematic weeds, creation of additional habitat to support local skink species, and the permanent protection of Area 1 and 2 through a covenant is also envisaged for the site. Ahikā suggests a 10-year commitment to this restoration plan.*

Summary

5. *Having visited the site and having read the restoration plan provided by the applicant, I agree with Ahikā's plan and that if the restoration plan was implemented successfully, it would make a significant contribution to the enhancement of indigenous biodiversity values in the local area.*
6. *My primary concern is that the biodiversity value of the site, upon which the application is contingent, would not be realised for several decades, if at all. To improve the likelihood of success, the applicants should be required to undertake all of the recommendations Ahikā has suggested in the restoration plan.*

7. *I also recommend the applicants 'report back' to Dunedin City Council with the progression of restoration at the site. This should include an explanation of the work that has been achieved including number of plants planted and what species, where they were planted, failure of plants, flora and fauna observations, predator catch rates, herbicide use and target pest species, photographic evidence etc. This should occur every 3-5 years to demonstrate contribution and enhancement of biodiversity values at the site.*

[67] Based on the above assessment, I am satisfied any adverse effects on biodiversity will be less than minor. Further, the full implementation of the proposed Restoration Plan has a potential to provide a significant contribution to the biodiversity values of the area.

Rural Character/Landscape Values

[68] Section 16.1 of the 2GP succinctly explains that *'the spread of non-rural uses including rural residential activities into rural area can have adverse effects on landscape values, rural character and amenity values, and natural environment functions and values.'*

[69] A greater level of density therefore has the potential to adversely effect the sustainability of the rural zone and the amenity values and rural character of the surrounding area.

[70] The council's Landscape Architect Mr. Luke McKinlay has reviewed the application including Mr. Mike Moore Landscape Architect 'Landscape Effects Assessment Report'. Mr. McKinlay's comments include an analysis of Mr Moore's assessment.

The site and surrounding environment

The 6.17 Ha property is located on the north/north-western facing slopes of Chain Hills, overlooking Wingatui and the northern Taieri Plain. The entrance to the property, off Chain Hills Road, is located within the plateau ridge part of the hill. A broad secondary ridge covers large parts of site near the western boundary. A gully occupies areas near the eastern boundary. The lower (northern) parts of the site fall steeply toward residential Wingatui.

Landcover within the site comprises a mix of pasture, exotic scrub and regenerating bush on steeper areas, including the gully. Exotic shelterbelts (macrocarpa and Eucalyptus) are also a feature of the site.

As identified in the landscape report, the majority of nearby residential development on the hill slopes is concentrated on the plateau-like ridge of the hills (zoned rural residential). However, nearby dwellings, such as those at 329 Chain Hills Road (160masl) and 32 Paterson Road (80masl) are visible from view locations on the Plains looking towards the site (see Appendix 1).

Landscape Effects Report

Mr Moore's report addresses the landscape effects of the proposed activity and is structured as follows:

- *Methodology*
- *Site and area description*
- *Landscape Values*
- *The proposed development and mitigation measures*
- *Landscape effects*

- *Dunedin City District Plan provisions assessment*
- *Conclusion*

It is agreed that this assessment generally follows the concepts and principles outlined in the New Zealand Institute of Landscape Architects (NZILA) Best Practice Guidelines.

Conclusions of the Landscape Effects Report, prepared by Mike Moore.

- *Whilst this part of the Chain Hills forms a visually prominent backdrop to the Taieri Plain and Mosgiel, their natural/rural landscape values are now highly modified by the presence of houses on the summit area and by the incoherent patchwork of pasture and woodlots that affects the legibility of the natural landform on the northern slopes overlooking the Taieri Plain.*
- *The subject site currently contributes to the landscape values of Chain Hills through:*
 - *Its open, unbuilt character.*
 - *The broad vegetation pattern of pasture on the gentler spur and scrub / regenerating forest on the steeper slope / gully-side areas, which reflects the natural landform.*
 - *The presence of indigenous vegetation*
- *The proposed house will be located in a relatively prominent position but is low in profile and aligns well with the landform. Earthworks effects will not be significant and built impact can be mitigated by a recommended recessive colour scheme. Significant plantings to help set the house in, screen it and provide a more dominant natural setting are proposed. These will also have biodiversity benefits.*
- *If the recommended mitigation measures are adopted, effects of the proposed development on recognised landscape values will be adverse in nature but minor in degree initially, reducing to adverse / less than minor in the long term. I consider that insofar as landscape effects are concerned, the activity is generally consistent with the relevant DCDP objectives and policies.*

Comments

Landscape Effects Assessment

- *I generally agree with Mr Moore that key viewpoints potentially impacted by the proposed development are predominantly located on the Taieri Plains. The viewpoints provided in the graphic material attached to Mr Moore's report provide a reasonable range of representative view locations. It is agreed that the generally low form of the dwelling, use of recessive colours and proposed mitigation planting will help to lessen potential adverse effects associated with the domestication of this rural site. Mr Moore's assessment of the extent of effects appears reasonable, with initial adverse/moderate-low effects reducing to adverse/very low as the proposed mitigation planting matures.*
- *In general, it is agreed that the proposed development will not represent a strongly contrasting departure from the existing character of Chain Hills*

but will result in a “minor adjustment in the relationship and relative dominance of open pasture verses built form and associated planting”.

Effects in the context of 2GP Policies and values of the Hill slopes rural Zone (Appendix A7.5 Hill Slopes Rural Zone)

- With regard to Objective 16.2.3 and the relevant values of this zone (Appendix A7.5), it is agreed that most of the site will remain in rural or conservation use and adverse effects of built form on naturalness will be mitigated by the significant contextual plantings proposed and the proposed forest regeneration areas.
- There is an existing mosaic of landcovers across the Chain Hills and the proposed mitigation planting and forest regeneration areas will visually integrate with this pattern.
- Whilst built development on the nearby hillslopes is largely concentrated on the upper slopes/ridge and the proposed building site is somewhat lower on the upper-mid slopes, it will be seen in the context of these other nearby dwellings as shown in Mr Moore’s figure 3 and site photos attached in Appendix 1 of this memorandum. As such, this development will not be introducing a wholly new type of development into this environment, rather, it will increase the ratio of built form to natural landcover somewhat.
- The combination of mitigation planting, proposed controls of cladding colours, the relatively modest scale of the dwelling, and the way in which it is aligned to follows the contours of the hillslopes will help to ensure it is not highly prominent and will not detract notably from the natural character of the surrounding hill slopes.

Mitigation

- In general, it is agreed that the proposed planting will help to visually integrate the proposed building in this location and that planting to the south of the proposed dwelling will, in time, be capable of proving a backdrop to the dwelling as viewed from locations on the Taieri Plain. It is agreed that in addition to providing visual integration, the proposed planting will also contribute positively to indigenous biodiversity in this area (an area of approximately 1400m² is proposed to be planted).
- Given that the gorse in front of the dwelling has been removed, it is unclear why the proposed Planting Area C follows the boundary of this pre-existing patch of gorse. If there is no supporting reason for this shape, as shown in figure 7(a), it is recommended that this area is re-shaped to follow the contour lines of this hillside.

Recommended Conditions

It is recommended that Mr Moore’s mitigation measures are adopted in full as conditions of consent, with a minor amendment to the shape of planting area C as noted above.

- [71] Based on my observations and Mr. McKinlay’s assessment, I agree with the conclusion that whilst this is a prominent location, the area is highly modified with housing and the introduction of a low-profile building with mitigation planting, coupled with recessive colour scheme, will significantly reduce the impact on the landscape and amenity.

Productive Soils

- [72] Productive soils are a relevant matter for assessment noting the small section of the site identified as classified as highly productive land and the directive nature of Policy 16.2.4.2. which states:

Only allow activities other than farming on highly productive land where:

- a. The scale, size, nature of the activity means that any loss of current or potential future rural productivity would be:*
 - i. Insignificant in any high-class soils mapped area; and*
 - ii. No more than minor in other area of highly productive land; unless*
- b. For mining, the activity must locate on highly productive land due to operational requirements and there are no practicable alternative locations.*

- [73] As noted earlier, the home and shed will not be located on highly productive land, only access to the building site and services will be located in this part of the site. Given the very limited extent of the land area identified as highly productive land, the site development will make little if any difference to any potential farming activity on this land. For this reason, it is considered that any effect on highly productive land will be less than minor.

Natural Hazards

- [74] The site is not subject to any hazard overlays in the 2GP. However, the applicant was requested to provide a geotechnical assessment as to the suitability of the site for building on.
- [75] The applicant provided a Preliminary Geotechnical Assessment from Geosolve dated 22 November 2021 (Appendix 2). This assessment has considered slope stability. The assessment notes that the site partly contains a large ancient landslide feature which also extends onto at least 3 neighbouring sites. As such the main geotechnical consideration at this site relates to mapped landslide.
- [76] The Geosolve report concludes that based on their desktop review and site inspection by an engineering geologist, they consider that the location of the proposed building platform on a subdued moderately-sloping ridge is likely to present a low risk of landslide activity. Given the site is likely to be underlain by schist rock and they note that the dwelling would be set back by 15m from the lateral scarp and headscarp of the ancient landslide that shows no evidence of current activity.
- [77] Geosolve recommends:
- that subsurface test pitting investigations are carried out to determine the full ground model and to support detailed design of the dwelling, when plans become available.*
 - best practice disposal of storm water and wastewater, cut-off drains, sufficient connection of foundations to competent soils/rock, and engineering design or overview of any earthworks and retaining walls.*
 - the setback from the ancient landslide should be confirmed following these investigations, however the current proposal of 15m appears likely to be suitable.*

[78] Overall, Geosolve considers that provided their recommendations are followed the proposed site is generally suitable for residential land use and that the development can be carried out without exacerbating instability on the site or any neighbouring site.

[79] The Geosolve report was peer reviewed by Stantec's Geotechnical Engineer, Mr Edward Guerreiro, his comments are below:

Geosolve acknowledges the location of the proposed dwelling in proximity to site hazards and in the context of the geology and slope angles. They suggest the site is generally stable and the proposed dwelling is unlikely to affect this state. The foliation of the schist in this aspect is favourable. There were no observed features of instability. There has been sufficient advice sought for this stage of development.

The fault proximity hazard relates to a recent GNS science report which identifies the Titri Fault. This fault location is "most certain, and it is drawn in the best estimated position from sparse geological outcrop information." This fault is classed as a "potentially active fault" with a recurrence interval of 19 000 years (class V).

We recommend that the application not be declined on the ground of known natural hazards.

There are no general potential instabilities of concern. The proposal will not create or exacerbate instabilities on this or adjacent properties.

[80] Stantec recommended a series of standard conditions for the earthworks. These have been incorporated in the draft conditions in Appendix A.

[81] Having regard for Geosolve assessment and Stantec's peer review, it is considered that should consent be granted, any risks from natural hazards and future earthworks could be appropriately mitigate through the imposition of appropriate conditions as recommended by Stantec.

[82] Effects from future earthworks will also be managed through the building consent process.

[83] Therefore, while Stantec has recommended conditions of consent it should be noted that these are generic in nature, but I am satisfied that the site is appropriate for residential use and the risk from natural hazards will not pose a risk no higher than low.

Transportation

[84] The application was forwarded to Council's consultant Planner, Mr. Antoni Facey, his comments are included below:

Access

The site is accessed via Chain Hills Road, which comprises a metalled surface in the vicinity of the site. It is noted that this section of road serves isolated residential homes that are associated with the Rural Residential zoning of the area. The title of the site holds a consent notice that states, that the DCC will not undertake any upgrading of the formation of Chain Hills Road (and Flower Street) beyond the unsealed pavement standard. Transport supports the retention of this consent notice.

The site enjoys approximately 37m of frontage to Chain Hills Road. The applicant proposes to construct a new driveway off Chain Hills Road that will follow the natural contour of the land. An RFI was sent asking for details of the proposed access. A plan showing two vehicle accesses was produced by the applicant. While it is unclear why two vehicle accesses are required to the single residential unit, the site is entitled to two accesses under Rule 6.6.3.1 of the 2GP.

Sight distances are consistent with Rule 6.6.3.2 of the 2GP.

Towards the northern end of the frontage is an existing gate to the site and it is assumed that vehicle access to the site is currently achieved via this entrance. There appears to be no formed vehicle crossing between the site and the Chain Hills Road carriageway. Instead, there appears to be an informal crossing providing access to the property via a gate. The vehicle crossing does not accord to any standards recognised by the DCC and would therefore need to be upgraded and access will need to be constructed to DCC standards. In accordance with Rule 6.6.3.9.a.iv. the vehicle accesses must be a minimum 3.5m formed width and be adequately drained for its full duration.

The vehicle crossings, between the Chain Hills Road carriageway and the property boundary, are within legal road and will therefore require a separate Vehicle Entrance Approval from DCC Transport to ensure that the vehicle crossings are constructed/upgraded in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this approval is not included as part of the resource consent process). The applicant is advised that any work within legal road is required to be undertaken by a DCC approved contractor and will require an approved corridor access request.

Due to the location of the site on sloping terrain, it is recommended that a condition of consent be imposed that requires the vehicle access to be constructed in accordance with the 2GP's gradient standards, pursuant to Rule 6.6.3.7. Specifically, the maximum change in gradient without transition for the vehicular access must be no greater than 1 in 8 for summit grade changes or 1 in 6.7 for sag grade changes.

Parking and manoeuvring

No further information has been provided in regard to parking and manoeuvring for the proposed dwelling. Due to the size of the site and its rural location, it is anticipated that adequate provisions will be provided as part of the development of the site. As there are no requirements for minimum car parking for residential activity, it is advised that in the event of any future development on the site(s), Transport would assess the provisions for access, parking and manoeuvring at the time of resource consent/building consent application.

Generated Traffic:

The proposal is a non-complying activity. Residential activity within the Rural Hill Slopes Zone is only permitted for sites of a minimum size of 15ha. That notwithstanding I note that Chain Hills Road provides access to further residential dwellings that are associated with the Rural Residential Zoning of the surrounding area. The proposed development will result in one additional dwelling being served by this section of Chain Hills Road. With reference to the Code of Subdivision, it is anticipated that the proposed dwelling will generate in the order of 8 additional daily trips.

It is evident from Council's RAMM database that the south-western section of Chain Hills Road carries an Average Daily Traffic amount of 313 vehicle movements (count from 2019). It is expected that the subject section of Chain Hills Road accommodates even lower traffic volumes. While Chain Hills Road is not sealed, it is considered that the available infrastructure is appropriate for the amount of traffic currently utilising it, and also traffic that will be generated by the proposed dwelling.

I consider that the traffic volumes associated with the proposed residential activity on the site can safely and efficiently be accommodated into the existing transport environment, with no more than minor effect. This is particularly the case considering the Rural Residential 1 zoning and associated land use of neighbouring properties. Overall, it is considered that the effects of the traffic generated as a result of this proposal on the transportation network will be no more than minor.

Conclusion

Transport considers the effects of the proposed development on the transportation network to be less than minor, subject to the following conditions and advice notes.

- [85] Having regard for the above assessment, I am satisfied the effects on the transportation network will be less than minor.

Wastewater disposal and water supply

- [86] The application was not forwarded to the Council's 3 Waters Department as the site is not served by any reticulated services. The site will be self-serviced for water supply and will require an on-site wastewater disposal system. The applicants have investigated a suitable system and have had contact with Otago Regional Council to ensure they can meet a certificate of compliance from ORC. These matters will also be dealt with at the building consent stage. There will therefore be no effects on the efficiency or affordability of the Dunedin City Council Infrastructure.
- [87] The applicant has also been in contact with Fire Emergency New Zealand (FENZ) and confirmed they will be installing a sprinkler system in the dwelling to mitigate the risk of fire. This satisfies Rule 9.3.3 of the 2GP.

Cumulative Effects

- [88] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build-up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [89] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [90] In this case a relevant question is whether an additional house and associated domestic activities in a rural area represents a tipping point where the character of the locality changes from rural to more of a rural residential character. In this situation I do not

consider that the proposed residential activity will lead to this tipping point given the comments from the Council's Landscape Architect, including the following comment that *"the proposed development will not represent a strongly contrasting departure from the existing character of Chain Hills but will result in a "minor adjustment in the relationship and relative dominance of open pasture versus built form and associated planting."*

- [91] Given the proposed planting which will see the largely pastoral landscape converted to native bush haven, I do not consider that the proposed activity would appear incongruous in this setting.
- [92] Provided that the condition of consent concerning landscaping, building siting, scale and materials are adhered to, I consider that any cumulative effects on rural character and amenity would likely be no more than minor.
- [93] In terms of loss of productive rural land to residential activity, it is my view that any cumulative effects of the proposal would be no more than minor given the small size of the site and the likelihood that the applicant's conservation efforts, which are considered to be a legitimate rural activity, will continue in the short to medium term.

Submissions

- [94] In regard to the above assessment, I have considered the concerns raised by the submitters in relation to the effects of the proposal. With respect to the visual amenity, reverse sensitivity, light and noise concerns, the applicants proposed planting intends to screen the boundary to the south-west and priority has been made for this planting to ensure the mature height screens the proposed dwelling. The proposed planting will enable neighbouring properties to continue to enjoy a sense of isolation and further develop an environment for local fauna to enjoy. I consider this adequate to address concerns raised, in addition to other controls proposed on the bulk and design of the proposed buildings and restrictions on exterior lighting. This approach should be coupled with conditions to manage the planting programme and overall development to ensure this mitigation measure is incorporated sensitively.
- [95] With respect to the alleged inconsistencies in the Biodiversity Report, I am satisfied the report has identified plantings that will be sympathetic to the surrounding environment and I am satisfied the Council's Biodiversity Advisor adequately audited the approach and methodology. I remain optimistic about the positives that will be gained from the planting programme that intend to bring positives to the surrounding environment beyond the subject sites boundaries.
- [96] I am guided by a recent Environment Court Decision No. [2023] NZEnvC45 on Appeal ENV-2022-CHC-024 in which the Court accepted an interpretation of Policy 16.2.1.7.Y.ii that the enhancement or protection of biodiversity does not have to rely on existing planting for there to be enhancement of biodiversity. Rather the Court considered a proposed restoration planting programme was sufficient in a situation where the starting point was a property also entirely limited to pasture. In this particular case, a similar programme of restoration planting is proposed, with the subject site being in an advantageous position of being surrounded properties already rich with native vegetation. The planting programme will be adding to this rather than starting at a point of ground zero. With this in mind, I am satisfied the proposal meets the 2GP Policy.

Effects Assessment Conclusion

On balance, I consider that any adverse effects arising from the proposal will generally be no more than minor. Should consent be granted, conditions to manage effects on rural character values, natural hazards and mitigation planting are recommended.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

[97] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

[98] Due to the advanced stage of the Proposed 2GP, wherein the rules, objectives and policies of relevance to this proposal, are now fully operative, an assessment against the Operative Plan objectives and policies has not been undertaken.

Operative District Plan

[99] Due to the advanced stage of the Proposed 2GP, wherein the rules of relevance to this proposal, and the majority of the objectives are now fully operative, a full assessment of the Operative Plan objectives and policies has not been undertaken. However, given that 2GP Rural Zone Policy 16.2.2.1 is still under appeal, a brief assessment of the proposal against these Operative Plan Rural Zone provisions that could be considered to correspond with provisions under appeal is provided below for context.

Provision reference	Summary of provisions	Assessment
Objectives 6.2.1 and Policies 6.3.1, 6.3.2, 6.3.3 & 6.3.11	These seek to maintain the ability of the land resource to meet the needs of future generations by: • sustaining the productive capacity of the rural zone; • providing for activities based on the productive use of rural land and other appropriate activities whose adverse effects can be avoided, remedied or mitigated; • discouraging the establishment of non-productive uses.	The proposal is considered to be inconsistent with these provisions given that it involves the authorising of a non-productive use which are to be discouraged in order to sustain the productive capacity of the rural zone.

Proposed 2GP

[100] Below is an assessment of the relevant objectives and policies of the 2GP, and the proposal's compliance with these provisions.

Transportation

Provision reference	Summary of provisions	Assessment
Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.9 and 6.2.3.10	These seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods, including by providing sufficient on-site manoeuvring.	The proposal is considered to be consistent with these provisions. Two entrances make exit and entry to the site safer and is permissible given the road frontage available. There is ample space on site to accommodate parking and manoeuvring associated with the proposed activity. The applicant has proposed a metal surfaced driveway off Chain Hills Road.

Public Health and Safety

Provision reference	Summary of provisions	Assessment
Objective 9.2.1 and Policy 9.2.1.1 and Policy 9.2.1.1A, Policy 9.2.1.	These seek to ensure that land use activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure, and will not lead to future pressure for unplanned expansion of infrastructure.	The proposal is considered to be consistent with this objective and policy. The proposal would be self-reliant with respect to services and is not expected to lead to future pressure for expansion of infrastructure.
Objective 9.2.2 and Policies 9.2.2.1, 9.2.2.4, 9.2.2.9 & 9.2.2.X	These seek to ensure that land use and development activities maintain or enhance people's health and safety, including by ensuring the following: • That activities are designed to properly manage noise and light spill; • that wastewater and stormwater are properly disposed of; • that new residential buildings have access to adequate firefighting water supply; • and that potential contaminants in soil are identified and properly managed.	The proposal is considered to be consistent with this objective and policies. The proposal does not present any particular concern in relation to noise or light spill from this or adjoining properties. As noted previously, the proposed dwelling will be self-serviced with regard to wastewater and stormwater. Appropriate management of stormwater and wastewater will be overseen via any building consent process. Any on-site wastewater disposal system will need to be designed by an appropriately qualified person. Given the size of the site and location of proposed dwelling, it is expected that appropriate management can be achieved.

		Adequate water supply will also need to be available at all times for fire-fighting purposes. There is scope for this to be provided on-site. The HAIL report identified no explicit information of HAIL activity.
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Natural Environment

Provision reference	Summary of provisions	Assessment
Objective 10.2.1 and Policies 10.2.1.1 and 10.2.1.5	These seek to maintain or enhance biodiversity values by ensuring that activities are only allowed where biodiversity values would be maintained or enhanced, including by encouraging conservation activities in all zones and limiting indigenous vegetation clearance.	The proposal is considered to be consistent with this policy. The restoration plan, details a 10 year commitment which will result in a significant enhancement to biodiversity values in the local area.

Natural Hazards

Provision reference	Summary of provisions	Assessment
Objective 11.2.1	This objective seeks to develop and locate land use activities in such a way as to ensure that only risk from natural hazards is no more than low in the short to long term.	The Council records do not identify any natural hazards on site, nor does the regional council system. Both the Geosolve Assessment and Stantec review have assessed the suitability of the site for the development in terms of land stability and determined that potential risks of instability can be managed. They have not identified any other risk to the residential development from natural hazards. As such the proposal is considered to be consistent with this objective.

Rural Zones

Provision reference	Summary of provisions	Assessment
Objective 16.2.1 and Policy 16.2.1.7	These seek to reserve rural zones for productive rural activities and the protection and enhancement of the natural environment, including by avoiding residential activity on sites that do not comply with the density provisions for the zone except in the following circumstances: where the	The proposal is considered to be consistent to these provisions which rely on the avoidance of residential activities on under-sized rural sites in order to reserve the rural zones for productive rural activities and enhancement of the natural environment unless the proposal can meet one of the exceptions. The site is just 6 1721m ² in size whereas the minimum site size for a residential activity is 15 hectares. To be consistent

	residential activity is associated with a surplus dwelling subdivision, or associated with long term management and/or capital investment that will result in significant positive effects for rural productivity and/or a significant contribution to the enhancement or protection of biodiversity values.	with the policy it is essential the proposal meet one of the circumstances set out in the policy in which residential activity not meeting the zone density provisions might be acceptable. The proposed planting plan will satisfy the provision for enhancement or protection of biodiversity values.
Policy 16.2.1.1	This policy seeks to enable farming, grazing and conservation in the rural zones.	The proposal is considered to be generally consistent with this policy given the small size of the site which somewhat limits its potential for farming. The establishment of the native bush is a legitimate rural activity and granting consent for residential activity on the site would promote on-going small-scale conservation efforts.
Objective 16.2.2 and Policy 16.2.2.1	These seek to minimise conflict between activities in rural zones by ensuring the potential for reverse sensitivity issues is minimised and a reasonable level of amenity for residential activities is maintained, including by requiring residential buildings to be setback an adequate distance from site boundaries and activities such as intensive farming and mining which have the potential to cause noise, odour and other such effects that have the potential to adversely effect residential amenity.	The proposal is considered to be consistent with these provisions. The receiving environment is a mixture of rural and rural residential blocks. As such there are a number of residential dwellings already in the area. Further, the proposed dwelling will comfortably satisfy the required boundary setbacks, with the exception of one boundary, coupled with the large planting proposed for the this said boundary I believe there is deliberate action to minimise any potential reverse sensitivity issues.
Objective 16.2.3 and Policies 16.2.3.1 and 16.2.3.2.	These seek to maintain and enhance rural character and amenity	The proposal is considered to be consistent/neutral with these provisions. The dwelling, whilst set in a prominent location, will be low and in sympathetic colours with dense native vegetation. It will not be visible from Chain Hills Road but will be from Wingatui area. Continued maintenance and conservation of this bush area will offset any effects on rural character and amenity arising from the density breach.
Objective 16.2.4 and Policy 16.2.4.4	These seek to maintain or enhance the productivity of rural activities in rural zones including by ensuring that	The objective seeks to maintain or enhance productivity in the rural zone. Policy 16.2.4.4 seeks to ensure that residential activity in the rural zones is at

	residential activity will not displace rural activities over time.	a density that will not, over time and cumulatively, reduce rural productivity by displacing rural activities. Although the proposal will not comply with the density requirement for the zone, the site is an existing, significantly under-sized site and accordingly I consider that the level of displacement of rural activities is relatively low. In fact, as noted earlier in this report, allowing residential activity on site will have the benefit of the bush being established in this area further expanding and benefiting the biodiversity values of Chain Hills. Therefore, it is considered that the proposal is consistent with this objective and Policy.
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Conclusion with regards to Objectives and Policies

- [101] as the relevant rules of the Proposed District Plan (2GP) are deemed operative and the relevant rules of the Operative District Plan are deemed inoperative, significantly more weight is given to the objectives and policies of the 2GP. However, some weight has been assigned to the Operative Plan because 2GP Policy 16.2.2.1 is subject to an appeal.
- [102] It is acknowledged, a reading of the objectives and policies, in particular Policy 16.2.1.7.Y.i could suggest there is an enhancement or protection of existing biodiversity value in the area. However, an interpretation of this policy, does not limit consideration to the boundaries of the subject site. Nor does it discount the initial establishment of the biodiversity from being included in the 'enhancement'. With no definition of 'enhancement' or 'protection', it leaves this policy open to broader interpretations. This matter was central to the outcome of the recent Environment Court Decision referenced earlier in this report. In the absence of considerations from the National Policy Statement for Highly Productive Land, I consider permitting undersized rural properties to establish native bush, fostering more local flora and fauna to be a more positive result than leaving these sites in pasture.
- [103] When looked at on the whole, the application could be said to be generally consistent with many objectives and policies of the 2GP, given the specific characteristics of the site and the proposed nature of the residential activity, all as outlined in the assessment of effects above.
- [104] However, Policy 16.2.1.7 prescribes that residential activity on a site that does not comply with density standards of the zone shall be 'avoided'. The 2GP provides specific and directive instructions for the intensity of residential activity that is to be avoided in Rural zoned and accordingly there is a clear policy direction that would not support the granting of this type of proposal unless it met a limited scope of circumstances. Because of the strongly directive wording, I consider that this policy must strongly influence the objectives and policies assessment.
- [105] I therefore consider that the decision largely turns on whether the proposal meets the intention of Policy 16.2.1.7 where in residential activity may be contemplated if associated

with long term land management or capital investment that will result in: ...a significant contribution to the enhancement or protection of biodiversity values.

- [106] In this case, based on the advice I have received from the applicant's ecologist Ahikā Consulting and Ms. Lunniss I am minded to conclude that the proposed residential activity has the potential to meet the above criteria notwithstanding that the gains would be achieved over a long timeframe and a good deal of monitoring will be required. Additionally, a recent decision of the Environment Court relating to a site at Outram (Decision No. [2023] NZEnvC45 on Appeal ENV-2022-CHC-024) determined that significant conservation could be established on site from a point of pasture to achieve this *significant contribution to the enhancement of biodiversity values*. I have therefore assessed the application as being consistent with Policy 16.2.1.7.
- [107] To be clear, if it were not for the proposed ecological restoration plan, I would be minded to conclude that the application were contrary to Policy 16.2.1.7.
- [108] The Operative Plan objectives and policies are considered to be less directive than those of the Proposed 2GP. I consider that given the specific characteristics of the site and the proposed nature of the residential activity that the application could be said to be inconsistent with, but no contrary to the relevant objectives and policies of that Plan.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [109] The objectives and policies of the Partially Operative Otago Regional Policy Statement ("RPS") were taken into account in assessing the application. The RPS was made partially operative in January 2019.
- [110] The 2GP provisions of central importance to the application are generally beyond appeal, and as such are deemed to give effect to the relevant objectives and policies of the RPS. The policy assessment above has found that the proposal is consistent with the key objectives and policies of the 2GP, however these are more directive than the objectives and policies of the RPS. As such I consider that the proposal could be said to be consistent with the relevant objectives and policies of the RPS.

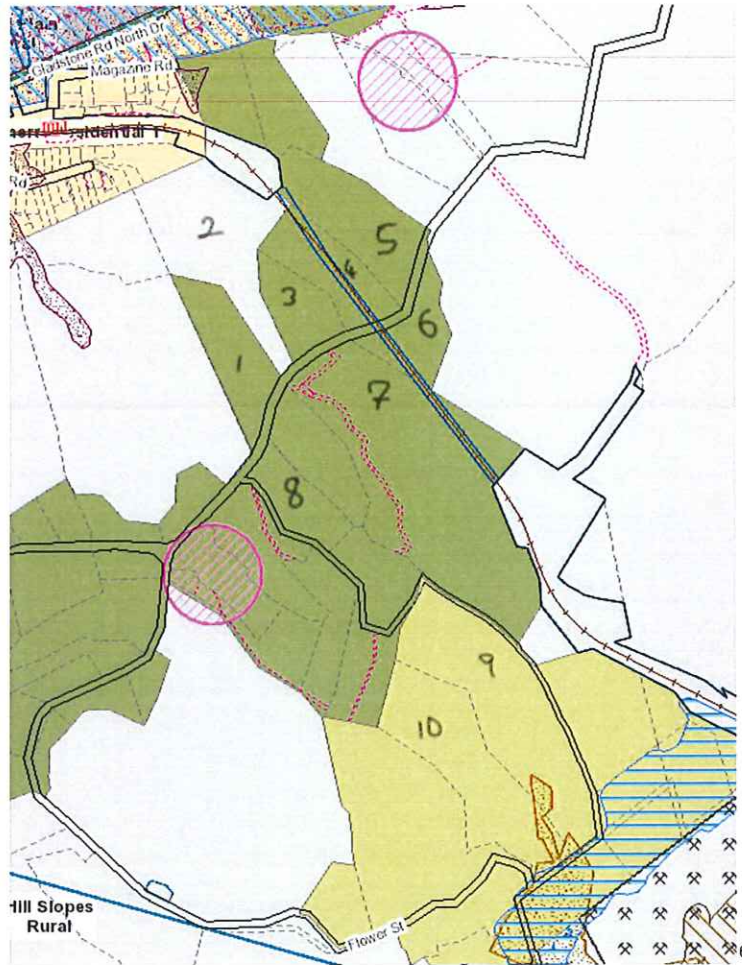
DECISION MAKING FRAMEWORK

Part 2 Matters

- [111] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.
- [112] Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of section 104D required that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan. It is considered that the proposal meets the first limb as any adverse effects arising from this proposed activity will be no more than minor. Given the assessment above of the application against the objectives and policies of the 2GP, I consider that the second limb would also be met. The Council can exercise its discretion under section 104D to grant consent.

Section 104(1)(c)

- [113] Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered relevant here. These issues have been addressed by the Environment Court (starting with *Russell v Dunedin City Council* C092/03) and case law now directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and/or the proposed district plan.
- [114] The 2GP sets a clear policy direction in terms of circumstances wherein residential activity is anticipated in rural zones. As such, I consider that there is a risk of an undesirable precedent being established in the absence of clear evidence to distinguish the application, or policy support that can be considered to outweigh the 'avoid' provision in the Rural Section of the 2GP.
- [115] In this case, the proposal is a non-complying because it involves residential activity on an under-sized site, in other words it does not comply with the anticipated density for residential activity in the Rural zone.
- [116] I do not consider the fact that the site is an existing smaller site within the Rural zone to constitute a true exception. I note that the 2GP does include exemptions from the minimum site size criteria for existing under-sized sites in some zones and circumstances. It is therefore evident that the policy direction to avoid residential activity on under-sized sites has been intentionally crafted to apply to all other sites, including the subject site.
- [117] The 2GP identifies that Dunedin already has a large number of small rural sites as a result of historic subdivision patterns but intentionally makes no provision for residential activity on sites that do not meet the minimum site size except for in certain very specific situations, such as where there would be a significant contribution to the protection or enhancement of biodiversity values.
- [118] I do consider that the proposed ecological enhancement project is a unique aspect of the proposal that could be considered to distinguish the application from others seeking to establish residential activity on a site not meeting the density requirement for the Rural zone. I consider that this aspect of the application can be considered to make it a "true exception."
- [119] By allowing the activity, I do not consider that a general precedent would be set that would undermine the integrity of the District Plan.
- [120] It is relevant to note, this site was created by way of subdivision on 11 August 1992. The site was part of a larger parent site that was divided in to 10 lots. Some of these sites were zoned Rural Residential under the 2006 Operative Plan. All of these lots, bar the subject site, have since been zoned Rural Residential 1 or Rural residential 2 under the 2GP. These zonings are more permissive for establishing a residential activity and carry smaller boundary setbacks to reflect the smaller size of the site.



RECOMMENDATION

After having regard to the above planning assessment, I recommend that:

- [121] *Pursuant to Part 2 and Sections 34A(1), 104, 104B and 104D of the Resource Management Act 1991, the Dunedin City Council grants consent the proposal for a non-complying activity being the establishment of residential activity on an under-sized Rural-zoned site at 317 Chain Hills Road, and;*
- [122] *That should the Panel exercise its discretion under section 104D to grant consent, that the draft conditions included in Appendix 1 should be imposed.*
- [123] *That the Panel should consider whether a bond and/or covenant would be appropriate in this case to address the risk of the ecological restoration project failing or not being completed, and to protect the biodiversity values in the long term.*

REASONS FOR RECOMMENDATION

- [124] Effects of the proposal associated with the loss of rural productive land, rural character and amenity will not have a direct effect on the wider environment that is more than minor when considered in terms of the definition of 'effects' provided under the RMA.

⁶ Images of the original scheme plan subdivision and the 2GP zoning today are in Appendix 3.

- [125] I consider the proposal to be consistent with the objectives and policies of the 2GP because of the investment and land management which, if successfully implemented, will result in a significant contribution to biodiversity values.
- [126] If the proposal comes to fruition in its entirety, I support the application and recommend that consent should be granted. This view is formed on the restoration planting being a success and monitoring showing plans are tracked to meet expected timelines of the ecological restoration project.

Report prepared by:

Report checked by:



Nicola Petrie
Planner

Campbell Thomson
Senior Planner

_27 Apr. 23_____
Date

27 April 23_____
Date