

## HEARINGS COMMITTEE AGENDA

**MONDAY, 24 JUNE 2024, 9.30 AM**  
**Council Chamber, Dunedin Public Art Gallery,**  
**30 The Octagon, Dunedin**

**MEMBERSHIP:** Commissioner Colin Weatherall and Councillors David Benson-Pope and Steve Walker

**IN ATTENDANCE:** Campbell Thomson (Senior Planner/Committee Advisor) and Wendy Collard (Governance Support Officer)

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

#### **1 RESOURCE CONSENT APPLICATION – SUB-2023-132, LUC-2023-376 & LUC-2023-377, 60 Bell Street, Outram**

##### **Introduction**

Applicant to introduce themselves and their team.

##### **Procedural Issues**

Any procedural matters to be raised.

##### **Presentation of the Planner's Report**

Report from John Sule, Consultant Planner

Refer to pages 1 - 38

##### **The Applicant's Presentation**

Application

Refer to pages 39 - 366

##### **Submissions**

Refer to pages 367 - 371

##### **Council Officer's Evidence**

- Email from MWH Hazards Team  
Refer to page – 372 - 374
- Memorandum from 3 Waters  
Refer to pages –375 - 376
- Memorandum from Building Services Processing  
Refer to pages 377 – 378
- Memorandum from Transport  
Refer to pages 379 – 383
- Memorandum from Urban Designer  
Refer to pages 384 - 385

- Memorandum from STANTEC  
Refer to pages 386 – 388
- Memorandum from Principal Policy Advisor  
Refer to pages 389 – 392

#### **Draft Conditions**

Refer to pages 393 - 399

#### **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:**

|   | <b>General subject of each matter to be considered.</b>      | <b>Reason for passing this resolution in relation to each matter.</b>                                              | <b>Ground(s) under section 48 for the passing of this resolution.</b> |
|---|--------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 1 | <b>Resource Consent application – 60 Bell Street, Outram</b> | <b>That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.</b> | <b>Section 48(1)(d)</b>                                               |

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**TO:** Hearings Committee

**FROM:** John Sule, Consultant Planner

**DATE:** 30 May 2024

**SUBJECT:** **RESOURCE CONSENT APPLICATION  
SUB-2023-132; LUC-2023-376; & 2023-377  
60 BELL STREET, OUTRAM**

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## **INTRODUCTION**

- [1] This report has been prepared on the basis of information available on 30 May 2024. 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] For the reasons set out in paragraphs 71 to 212 below, I consider that the subdivision proposal is likely to have effects which are no more than minor with appropriate conditions in place, but that the subdivision proposal is contrary to key policies of the proposed District Plan (2GP) and the National Policy Statement on Highly Productive Land (NPS-HPL).
- [3] While the proposed veterinary clinic land use does not conflict as strongly with the policy frameworks of these documents, the 2GP and the NPS-HPL have directive policies seeking to avoid (not allow) the subdivision of highly productive land in the manner proposed in application. The proposed subdivision does not appear to meet the range of exceptions provided in these policy frameworks. I have considered the relevant case law in relation to the application of directive policies and as a result, I have concluded that the combined subdivision and land use proposal should be declined. If the proposal was exclusively a land use proposal for a veterinary clinic, then it is likely that the recommendation would be to grant consent.

## **BACKGROUND**

- [4] The site at 60 Bell Street was created by a 2005 boundary adjustment subdivision (RMA20050889) and titles were issued in June 2006. In 2019 a land use consent was issued for a new farm/storage shed on the site (LUC-2019-40) that was intended to support the existing land use activity that includes a dwelling, and a relocated sleepout approved by resource consent in 1995 (RMA953760).
- [5] During processing a further information request was sent to the applicant's agent on 24 October 2023 in relation to NES-CS, flood hazard and water supply matters. A response was provided by the applicant on 17 January 2024 and further information was provided in relation to the NESCS on 15 March 2024. An assessment of the proposal against the

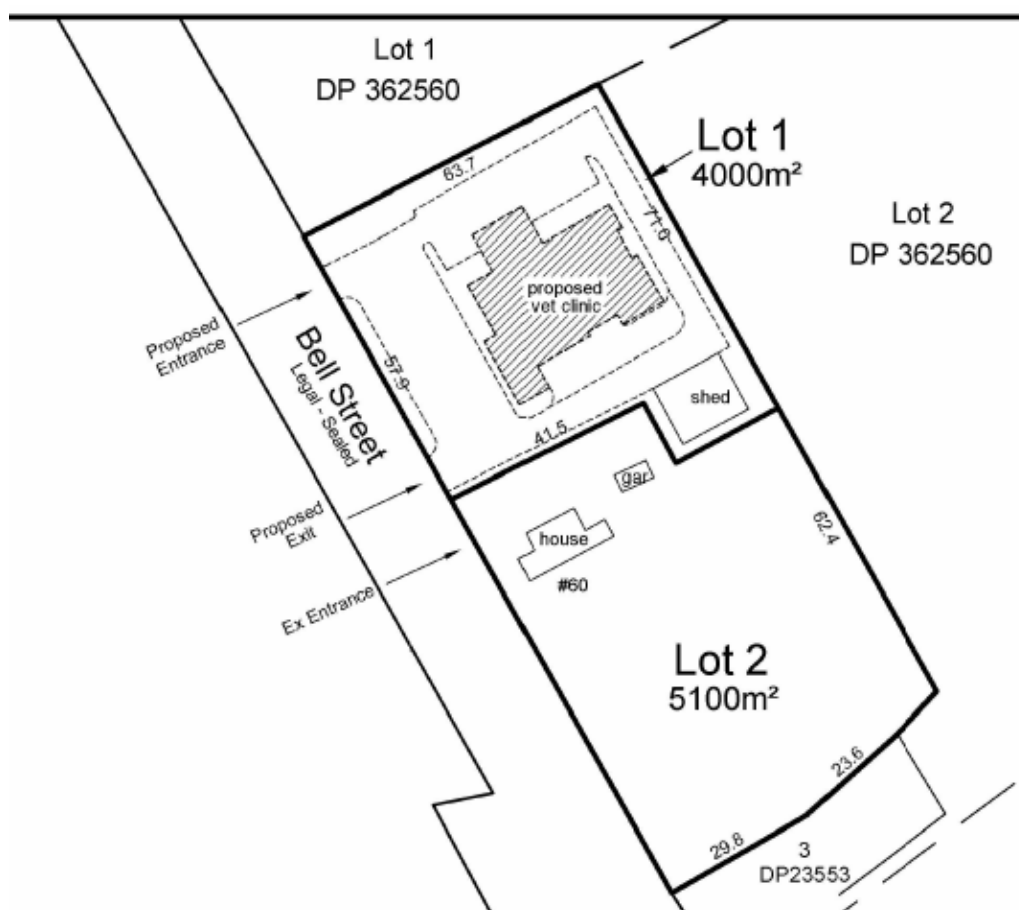
NPS-HPL was provided prior to the formal further information request on 16 October 2023.

#### DESCRIPTION OF THE PROPOSAL AND THE SITE AND LOCATION

[6] The proposal is to subdivide the site at 60 Bell Street, Outram into two allotments and establish a new veterinary clinic on Lot 1 of the subdivision. The existing dwelling on the site is to be retained on Lot 2 of the subdivision. The details of the new lots are as follows:

- Lot 1 will be purchased by the applicant Clutha Vets and developed to provide veterinary services. Lot 1 contains an existing shed constructed in 2019 and approximately 4,000m<sup>2</sup> of land.
- Lot 2 will contain the existing dwelling and garage and an area of land to the south of the dwelling and be retained by the current landowners Mr and Ms Warnock. Lot 2 will contain approximately 5,100m<sup>2</sup>.

[7] Figure 1 below shows the layout of the proposed subdivision, and it identifies the proposed entrance and exit for the new clinic from Bell Street.



**Figure 1: Subdivision Site Plan (Part) (Source – Application SUB-2023-132 & LUC-2023-377)**

[8] The veterinary clinic to be established on Lot 1 will be approximately 958m<sup>2</sup> in area and have a maximum height of 6.685m. A possible extension of 96m<sup>2</sup> to the building is also shown on the site plan supplied with the application.

- [9] The building will be single storey and the exterior walls will be clad in a mixture of trapezoidal Coloursteel and horizontal cedar weatherboards with aluminium joinery for windows and doors. Schist stone or brick cladding will be used for the columns on either side of the main entry to the building. There will be 26 parking spaces 22 being standard car parks, 2 mobility car parks and 2 larger and longer parks to provide for trailers/floats/trucks. The existing shed will be used as a bulk store.
- [10] The site is gently sloping to the southeast with three existing entrances to Bell Street. A poplar shelter belt adjoins the frontage to proposed Lot 1 and there is also existing landscaping in front of the existing dwelling. Figure 2 below taken from the opposite side of Bell Street looking north along the site's frontage shows this existing landscaping.



**Figure 2: View of the sites landscaped frontage (Source – Site visit photo October 2023)**

- [11] The applicant intends to remove most of the poplars along the road frontage and to replace them with indigenous plantings following completion of the building. There will also be other areas of plantings proposed within Lot 1 to mitigate the impacts on the building and activity and the application identifies that these will also consist of indigenous plants. The existing entrance at the northern end of the site to be located on Lot 1 will be relocated slightly to the south which will require removal of some poplar trees providing visual screening from the road. A second egress will be established at the southern boundary.
- [12] In addition to the central location of the building on the site and design elements used to mitigate the effects of the proposal the applicant proposes the following conditions:
- The poplars will be retained, excepting removal of those trees to provide for access, until building of the proposed veterinary services building is complete.
  - that a consent notice be placed on the title of Lot 1 stating that residential activity cannot be established on Lot 1.
  - Prior to site works or construction commencing the consent holder must submit a planting plan for Lot 1 to [rcmonitoring@dcc.govt.nz](mailto:rcmonitoring@dcc.govt.nz) to be reviewed and approved by the Council's Resource Consent Manager (or nominee). The planting plan must specify the areas to be planted, details of all proposed species, numbers of plants, size at time of planting and mature heights of all species, weed

and pest control. The planting is to consist of suitable indigenous plants, planted at a density of no greater than 1 per 2m<sup>2</sup>."

- [13] No typical hours of operation are identified in the application but the application notes that Clutha Vets proposed to provide "top quality and up-to-date animal health services, advice and products to our members and the community, 24 hours a day, 7 days a week".
- [14] This suggests there will be some activity at the site at the weekends and potentially at night and exterior lighting of the facility is also proposed. The application indicates that no loading of the bulk store will occur at night.
- [15] The site is located among an enclave of lifestyle sized sites on the eastern side of Bell Street, bounded by the Outram township to the north, a flood stopbank to the east, and a cluster of residential scale development on rural zone land to the south that straddles both sides of an unformed section of Huntly Road. To the west across Bell Street is an unserviced Township and Settlement zone and recreation land.
- [16] The site is legally described as Lot 3 DP362560, and it is held in Record of Title 255260. There are no interests on the title that would impact on the proposed subdivision and development.
- [17] Three consents are considered appropriate for the assessment and administration of the proposal. A subdivision consent (SUB-2023-132); a land use consent for the existing residential activity on Lot 2 being a smaller site than the existing site (LUC-2023-376); and a land use consent for the establishment of the veterinary clinic on Lot 1 (LUC-2023-377).
- [18] A copy of the application, including the plans of the proposed veterinary clinic, is contained in Appendix 1 of this report.

#### **ACTIVITY STATUS**

- [19] 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.
- [20] 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 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.

#### **Dunedin City District Plan**

- [21] The subject site is zoned Rural in the Operative District Plan, and the site is also within Ground Water Protection Zone A. Bell Street is classified as Regional Road in the Plan's Roading Hierarchy.
- [22] In this case the relevant operative Plan rules are deemed inoperative, and they have been superseded by the relevant 2GP rules that are beyond legal challenge and assessed below. As the operative Plan rules are deemed inoperative under Section 86F of the RMA, the proposal has not been assessed against these rules.

## **Proposed Second Generation Dunedin City District Plan (Proposed 2GP"**

- [23] The subject site is zoned Taieri Plain Rural, and it is subject to several overlays and mapped areas as follows:
- Groundwater Protection Mapped Area (Type A; Lower Taieri Aquifer)
  - High Class Soils Mapped Area
  - Hazard 2 (flood) Overlay Zone (Moderate risk; Area 1B - West Taieri Plain above high tide level)
  - Swale Mapped Area (Area 1C - West Taieri overland flow paths)
- [24] Bell Street is identified as an Arterial Road in the Plan's Road Classification Hierarchy.
- [25] 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, where no 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. In this case the relevant 2GP rules are deemed operative as they are beyond legal challenge under Section 86F of the RMA.
- [26] The proposal falls under the definitions of *subdivision, earthworks, construction, parking, loading and access, buildings and structures activities, natural hazards potentially sensitive activity, standard residential and veterinary services.*

### Subdivision

- [27] Rule 16.3.5.1 lists general subdivision as being a restricted discretionary activity in a rural zone subject to compliance with the following performance standards.
- Access
  - Esplanade reserves and strips
  - Firefighting
  - Minimum site size
  - Shape
  - Setback from National Grid (subdivision activities)
- [28] In this case the proposal will contravene the performance standard for minimum site size by a significant margin and the subdivision is required to be assessed as a non-complying activity in accordance with Rule 17.7.4.3. Assessment guidance is provided in Rule 16.12.5. and this guidance directs the assessment of minimum site size contraventions to consideration of rural zone objectives 16.2.1, 16.2.3 and 16.2.4 and policies 16.2.3.2, 16.2.3.8, 16.2.4.3, 16.2.4.4, 16.2.1.5.b. and in relation to residential density policy 16.2.1.7.a. Other considerations identified include the strategic policy guidance in Section 2 and the efficiency and affordability of infrastructure in Section 9.

### City Wide Activity

- [29] Earthworks and construction proposed for the site are classified as citywide activities. The application identifies that the proposal will contravene threshold for permitted small scale earthworks which are set at a relatively low level due to the presence of a flood hazard and a groundwater protection mapped area. No earthworks are proposed within the swale feature on the site.

[30] The total volume of earthworks (nett cut and fill) is estimated to be approximately 300m<sup>3</sup>. The proposed earthworks, therefore, exceed the small scale earthworks threshold for maximum volume of combined cut and fill, which is limited to 20m<sup>3</sup> of fill, and they are therefore classified as Large Scale earthworks. Large Scale earthworks on a rural site within a flood hazard overlay are a restricted discretionary under Rule 8A.3.2.3, with the discretion of Council restricted to:

- *effects on visual amenity*
- *effects on amenity of surrounding properties*
- *effects on the stability of land, buildings, and structures*
- *effects on biodiversity values*
- *risk from natural hazards.*

[31] In relation to the performance standard that seeks to ensure that High Class Soil is retained on the site, the applicant advises that high class soil would be retained on site excluding any soil that needed to be removed due to potential contamination<sup>1</sup>.

[32] The application also identifies that the proposed scaffolding used in construction will likely breach setbacks for construction that is more than 90 days in duration (Rule 4.5.1.c). The contravention is a restricted discretionary activity under Rule 4.5.1.3 with the Council's discretion restricted to relevant rural zone assessment rules that include:

- *effects on amenity of surrounding properties*
- *effects on rural character and visual amenity*
- *reverse sensitivity effects*
- *effects in supporting a farming or conservation activity*

#### Land Use Activity

[33] The proposed veterinary services activity requires consent as a restricted discretionary activity under Rule 16.3.3.37 and the Council's discretion is restricted to the consideration of:

- *Effects on rural character and visual amenity*
- *Effects on amenity of surrounding properties*
- *Effects on the safety and efficiency of the transport network.*

[34] I note that Rule 16.3.2 of the 2GP anticipates that if a new land use activity requires a resource consent, all associated development activities will be considered and assessed as part of the resource consent even if the development otherwise meets the development performance standards listed in the Plan. This means the effects such as the proposed buildings bulk are to be assessed.

[35] Veterinary Services fall with the definition of *Natural Hazards Potentially Sensitive Activities*. Resource consent is therefore required under Rule 16.3.6.2 for the proposed veterinary services activity and under Rule 16.3.6.3 for the proposed building. These proposed activities within a Hazard 2 Flood Overlay will be a restricted discretionary activity where the Council's discretion is restricted to *the risk from natural hazards*.

[36] The existing standard residential activity on proposed Lot 2 of the subdivision will be on a new smaller site. As a consequence, if the subdivision is granted, it is considered

<sup>1</sup> Clarification Email from the applicant's agent on 20 October 2023.



appropriate to issue a replacement land use for the existing residential activity on Lot 2 of the subdivision as a non-complying activity pursuant to Rule 16.5.2.3.

#### Development Activity

- [37] Consent is required for a new building exceeding 60m<sup>2</sup> in a Hazard Flood 2 overlay under rule 16.3.6.3.c with the Council's discretion restricted to consideration of the *risk from natural hazards*.
- [38] In addition to the consent for the building in relation to Hazard 2 flood performance standards other non-compliances with development performance standards are identified in the application and noted below.
- [39] The proposal will contravene Rule 4.5.1 (construction development standards), Rule 6.6.3.1.a.ii.3 (number of vehicle crossings), Rule 6.6.2.3.a.iii (permanent marking of loading area) and 6.6.1.5 (hard surfacing of parking areas) as not all carparks will be hard surfaced. The Council's discretion for these contraventions is restricted to consideration of:
- *Effects on amenity of surrounding properties (construction)*
  - *Effects on the safety and efficiency of the transport network (transport)*
- [40] Although the application identifies that compliance with relevant boundary setbacks will be achieved by the proposed new building, this depends on the setbacks that are applied. The application at paragraph 51 indicates that a 20m front yard is appropriate for the clinic building which is clear as it applies to all buildings. The application also identifies that the applicable side yard and rear yard is 12m for the veterinary clinic, presumably on the basis that the veterinary clinic may be housing animals. If the treatment of animals in a clinic is not considered to be housing of animals like a kennel or a stable would be then the applicable setback would be reduced to 6m.
- [41] I note that the application Site Plan actually shows both the 6m and 12m setbacks and it identifies non-compliance with a 12m rear boundary setback and compliance with the 6m standard. I think that it is likely that a 6m yard applies as the proposed building's purpose is not for the housing on animals, but for the avoidance of doubt, I consider that a consent is appropriate for a contravention of the required 12m rear boundary setback under Rule 16.6.10.1.ii as a restricted discretionary activity, with the Council's discretion restricted to consideration of the *effects on the amenity of surrounding properties*.
- [42] The existing shed is located with the required 6m setbacks for the external rear yard and the proposed internal side yards. This shed was previously authorised under a land use consent. As setback standards in the 2GP only apply to new buildings the setback contraventions by the existing shed in relation to the proposed internal boundary are not considered to require further authorisation under the land use consent for the veterinary clinic.

#### **Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")**

- [43] 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.

- [44] The original application did not provide any information on the proposal status under the NES-CS and when this was raised with the applicant's agent as a likely further information matter a HAIL application search was lodged by the applicant.
- [45] The HAIL search request (HAIL-2023-132) identified the site as a former market garden site and a possible HAIL site in relation to HAIL category A10 that relates to the application of persistent pesticides. Other potential contamination sources are identified as lead paint around buildings, fill material, farming activity and asbestos used in buildings.
- [46] Following the receipt of the HAIL report the applicant provided information on soil testing previously undertaken for flood bank earthworks under the Outline Plan application OUT-2022-1. This testing was partly undertaken on land in proposed Lot 2, but this testing did not extend into the development site on Lot 1. The applicant sought to rely on this previous investigation. This approach was considered by the Council's soil contamination experts Stantec NZ Ltd, who identified the presence of burn piles within the subject site on Lot 1, which they considered warranted further investigation.
- [47] The further information request issued on 24 October 2023 included a request for the applicant to confirm whether the NESCS was applicable to the proposal. The HAIL report has subsequently indicated that the site is possible HAIL and the applicant's agent's initial response to the further information request provided on 17 January 2024 indicated that this HAIL status was accepted by the applicant. The response identified that resource consent was being sought under the NESCS for the proposed development (change of use and earthworks) as a discretionary activity under Regulation 11 of the NESCS as no PSI or DSI has been provided with the application.
- [48] The applicant's initial NES-CS response was not accepted as completing the further information request as there was no assessment of the risk was provided as required under the further information request. The applicant's agent responded on 15 March 2024 by supplying a report from EC Otago Limited specifically relating to the identification assessment and remediation of two burn piles identified on Lot 1 as the burn piles were identified by the Council's experts as a potential risk when the site was being developed. The report identified contaminant levels associated with these burn piles above guideline levels for safe rural land use, but advised that validation sampling had confirmed that the two burn pile areas had been effectively remediated by ground scraping and removal of soils to an approved facility.
- [49] The applicant's agent suggested in the 15 March 2024 response that no resource consent is required under the NES-CS on the basis of the report provided. While this report addresses the principal soil contamination concerns identified by the Council's experts, the report provided is not a PSI or a DSI for the subdivision site and as a consequence a consent is still considered to be required for the subdivision/change of use and soil disturbance on a HAIL site as a discretionary activity. The soil disturbance will exceed the permitted level under Regulation (3) below and the subdivision permitted activity requirements are also not met.

#### *Disturbing Soil*

*(3) Disturbing the soil of the piece of land is a permitted activity while the following requirements are met:*

- (a) Controls to minimise the exposure of humans to mobilised contaminants must—*
  - (i) Be in place when the activity begins:*
  - (ii) Be effective while the activity is done:*
  - (iii) Be effective until the soil is reinstated to an erosion-resistant state:*

- (b) The soil must be reinstated to an erosion-resistant state within 1 month after the serving of the purpose for which the activity was done:*
- (c) The volume of the disturbance of the soil of the piece of land must be no more than 25 m<sup>3</sup> per 500 m<sup>2</sup>:*
- (d) Soil must not be taken away in the course of the activity, except that, —*
  - (i) For the purpose of laboratory analysis, any amount of soil may be taken away as samples:*
  - (ii) For all other purposes combined, a maximum of 5 m<sup>3</sup> per 500 m<sup>2</sup> of soil may be taken away per year:*
- (e) Soil taken away in the course of the activity must be disposed of at a facility authorised to receive soil of that kind:*
- (f) The duration of the activity must be no longer than 2 months:*
- (g) The integrity of a structure designed to contain contaminated soil or other contaminated materials must not be compromised.*

#### *Subdividing or Changing Use*

*(4) Subdividing land or changing the use of the piece of land is a permitted activity while the following requirements are met:*

- (a) A preliminary site investigation of the land or piece of land must exist:*
- (b) The report on the preliminary site investigation must state that it is highly unlikely that there will be a risk to human health if the activity is done to the piece of land:*
- (c) The report must be accompanied by a relevant site plan to which the report is referenced:*
- (d) The consent authority must have the report and the plan.*

- [50] The proposal fails to comply with the requirements under the National Environmental Standard for controlled and restricted discretionary activities. As a result, the proposal is a discretionary activity under the National Environmental Standard.

#### **Overall Activity Status**

- [51] 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.
- [52] If the bundling principle is applied, the application is considered to be a **non-complying activity** due to the activity status for the subdivision.
- [53] In this case it is worth considering whether bundling should be applied to the land use consent for the veterinary clinic as the establishment of the veterinary clinic is arguably a discrete activity that has a much more straightforward consent pathway in the 2GP. Under the 2GP the veterinary clinic itself would be a restricted discretionary activity where the Council's discretion is restricted to consideration of the effects of the clinic on rural character and visual amenity, the amenity of surrounding properties and the safety and efficiency of the transport network.
- [54] All the other performance standard rule contravention arising from the development of the clinic (excluding the soil disturbance under the NES-CS) would also have a restricted discretionary status. Importantly, no consideration of rural productivity or high class soils would be necessary in determining the acceptability of a veterinary clinic in a rural zone and this is presumably because the 2GP considers that veterinary clinics are necessary in the rural zone to support productive rural activity.
- [55] Having considered the matter, I have recommend bundling as appropriate as the subdivision will precede the development and land use change, but I also recommend the Committee consider the bundling issue when deliberating on the consent. While there is no baseline that arises from a restricted discretionary activity, I have been cognisant of the limited ability to consider productivity and soil quality issues under a restricted

discretionary status for a veterinary clinic in the assessment of relevant objectives and policies provided below.

## NOTIFICATION AND SUBMISSIONS

[56] After initial consideration of the application in a s95 assessment, it is considered that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.

[57] Parties from four sites were identified as affected parties as they were subject to minor effects in a s95 assessment of the proposals. Three written approvals were subsequently submitted with the application from the parties in the following table:

| Person                    | Owner | Occupier | Address                   | Obtained   |
|---------------------------|-------|----------|---------------------------|------------|
| Hamish and Rebecca Miller | ✓     | ✓        | 54 Bell Street, Outram    | 19/02/2024 |
| Nigel W H Hodge           | ✓     |          | 528 Allanton Road, Outram | 27/02/2024 |
| David J & Katrina J Gale  | ✓     | ✓        | 63 Bell Street, Outram    | 20/03/2024 |

[58] 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. I note that the written approval from the Gales contains a request for the road to be improved with kerb and channelling on both sides of the road given the commercial nature of the proposed clinic. This is not considered to be a condition of the affected party approval, but a desired outcome sought from the consent process.

[59] The written affected party approval was not obtained from the owners and occupiers of 55 Bell Street (David J and Christina K Young) and the application was, therefore, notified on a limited basis on 29 March 2024.

[60] A copy the application was sent to Youngs with submissions closing on 30 April 2024:

[61] A submission was received from David and Christina Young prior to the close of submissions. The submission opposes the veterinary services activity but not the subdivision and seeks that the consent for the proposed veterinary clinic be declined. The following matters were identified as areas of concern.

- *Traffic management is a significant area of concern. The speed limit along this part of Bell Street/Allenton Road is 50 kph. Very few vehicles travel at this speed, with many exceeding this speed limit. Increasing traffic exiting and entering this stretch of road will create an increased risk of accidents, which would occur immediately opposite our home. Heavy traffic, horse floats/trucks, etc, entering and exiting the proposed practice would create additional hazards along with the noise impact of engine breaking and accelerating. Again, this would directly impact our property. This part of the road is well used by cyclists and walkers and the increase in traffic would create additional risks. Any potential work to mitigate the increased risks could impact on our road frontage and vehicle entrance.*
- *The hours of business are not clearly defined which creates a concern that there will be the potential for increased traffic and noise at night and on weekends. There are no guarantees that an extension of hours may be considered in the future, creating further uncertainty.*
- *The draft plan includes an outdoor dog run. If large numbers of dogs are kept onsite, and potentially overnight, this could generate additional noise. Staff*

*checking on animals, out of usual business hours, would also create additional noise.*

- *We are aware that some veterinary practices offer a cremation service for pet owners. In a residential/lifestyle area this would not be acceptable.*

#### **ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY**

[62] 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**

[63] 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.

[64] Subdivision is proposed under SUB-2023-132 and there is no permitted baseline in the 2GP for subdivision as all subdivisions require resource consent. The parent title is significantly smaller than minimum site size and the proposal creates two new sites significantly smaller than the minimum site size.

[65] In terms of land use the permitted baseline is limited by the size of the existing site and the presence of a Hazard 2 Flood overlay. The hazard overlay means that very little building development could occur without a consent as new buildings are limited to 60m<sup>2</sup> within a two calendar year period.

[66] In this case a large building and commercial activity are proposed, and the baseline is therefore considered to be of limited value in providing for comparable adverse effects to be disregarded. The effects of the proposal therefore require assessment.

[67] The effects of the activity must be considered having regard to the receiving environment. 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.

[68] For the subject site, the existing and reasonably foreseeable receiving environment comprises a small rural zone site on the southern outskirts of Outram that contains an existing dwelling and accessory buildings that is used for a lifestyle activity. The site was created by a boundary adjustment subdivision in 2005 and title was issued in June 2006 following completion of the subdivision. The earliest building consent record for the site is a building consent for a bedroom addition in 1975 and the dwelling is significantly older. A land use consent was issued for the relocation of a sleepout in 1995 prior to the subdivision and a subsequent land consent has been issued for the establishment of a shed in 2019 (LUC-2019-40). These buildings have been established and there are no unimplemented consents that relate to the site.

[69] For adjacent land, the existing and reasonably foreseeable receiving environment primarily comprises residential and lifestyle properties. A recreational area located to the west of the site will likely be retained for the foreseeable future. Further to the north is the Outram township, and rural productive rural land is located to the east, west and south of the site beyond the township and settlement zones, and an existing enclave of large lot residential and lifestyle sites.

[70] While the land to be subdivided is zoned rural the site and immediate area surrounding the site have more of a large lot residential/rural residential character due to the size of the sites and the pattern of surrounding development and activities. Residential and lifestyle use of adjacent land is likely to continue for the foreseeable future.

## **Assessment of Effects**

### **(Dunedin City District Plan)**

[71] The assessment of effects is guided by the relevant assessment matters in the proposed 2GP along with matters in any relevant national environment standard. The assessment is not restricted as it has a non-complying activity status and a broad assessment is required. No regard has been given to any trade competition or any effects of trade competition. The following matters are assessed.

#### **Subdivision**

- Lot Size and Dimensions, Physical Limitations and Rural Productivity
- Easements
- Infrastructure
- Transport
- Natural Hazards
- Soil Contamination
- Amenity Values and Character

#### **Land use – Earthworks & Construction**

- effects on amenity of surrounding properties
- effects on the stability of land, buildings, and structures
- effects on biodiversity values
- risk from natural hazards
- reverse sensitivity effects
- effects in supporting a farming or conservation activity

#### **Land use – Veterinary Clinic**

- Effects on rural character and visual amenity
- Effects on amenity of surrounding properties
- Effects on the safety and efficiency of the transport network
- Operational Noise
- Risk of Natural Hazards

Positive Effects

Cumulative Effects

## Subdivision

### *Lot Size and Dimensions, Physical Limitations and Rural Productivity*

- [72] The proposed 9100m<sup>2</sup> site to be subdivided is significantly undersized for the Taieri Plains Rural zone. It is currently used for lifestyle purposes. The proposal is to subdivide the site into two sites reducing the existing lifestyle lot containing the existing dwelling to 5100m<sup>2</sup> (Lot 2) and providing 4000m<sup>2</sup> for the Lot 1 site to be used as a veterinary clinic. These site sites are significantly smaller than the Plan considers acceptable, and this is acknowledged in the application. The applicant's position is that the site is already of a size that will not readily support a productive use of the land. Therefore, creating a new site for a veterinary services activity, which is envisaged as occurring within rural zones, is not inappropriate as the effects of the veterinary activity will be appropriately managed.
- [73] The applicant's agent considers the subdivision when considered as whole, provides a suitably sized rural allotment with frontage to an arterial road for the location of the veterinary services noting that there is a land use consenting pathway for the proposed activity.
- [74] It is accepted that the site is already undersized, and it is also accepted that the existing environment is more large lot residential or rural residential in character than rural with a more rural character emerging south of Huntly Road. It is also acknowledged that a veterinary clinic could seek to establish on the existing site without subdivision. Under this scenario the Council would be restricted to considering the effects on rural character and visual amenity, the amenity of surrounding properties and the safety and efficiency of the transport network. Rural productivity and loss of highly productive soil would not be matters for consideration.
- [75] There is demand for an additional veterinary clinic in the Mosgiel/Outram area, but I note that this demand is not likely to result in a large number of veterinary clinics proliferating throughout rural zones. Given the sites proposed location at the edge of Outram across the road from a large lot residential zone and a recreation reserve and the existing productivity limitations that arise from the size of the subject site the impact on rural productivity arising from the subdivision and veterinary clinic proposal is assessed as a minor effect.
- [76] Under the proposal, fragmentation of rural land would occur as 4000m<sup>2</sup> of productive land would be lost from potential productive use in the future. This is a relatively small loss, but the land is highly productive having LUC-1 soils. Accepting that a veterinary clinic could potentially be established through a consent without consideration of the productivity of the land to be used for the clinic, the issues related to productivity are primarily associated with the proposed subdivision and not the land use. In this case, I also consider they appear to be more to do with policy than adverse effects, as the likely productivity loss arising from the proposed land use appears to be minor to be contemplated by the 2GP when a veterinary clinic is established. The policy issues are considered in detail below.

- [77] In relation to the subdivision, the subdivision presents as a surplus dwelling subdivision where the dwelling and its curtilage will be retained, and a small rural lot created. However, the proposal does not qualify for consideration under the rules for this type of subdivision, given the small size of the existing site. No productivity assessment is provided in relation to the proposal, but given the size of the lots involved and their location the wider productivity implications appear minor. The existing locality presents as rural residential in character with lot sizes that are significantly below plan expectations. The subject site and adjoining sites within an enclave bounded by a flood stopbank and residential development west of Huntly Road are currently lifestyle sites that are likely to remain as such for the foreseeable future.
- [78] There are natural hazards that relate to the site which have been assessed. The two primary hazards are flooding and liquefaction. The hazards can be addressed through building design and stormwater management and the degree of risk from natural hazards does not indicate the land is unsuitable for its intended use.

#### Easements

- [79] No easements are proposed, and none appear necessary. Each site will have independent vehicle access and will be self-sufficient in relation to the provision of services. There is no Council infrastructure located within the subject site.

#### Infrastructure

- [80] The Subdivision Support Officer from the 3 Waters Department, Andrew Budd and Andrew Roberts from Building Services, have considered the application. Mr Budd notes that while the site is located within the DCC water boundary, it is not zoned for a water connection. Any water application would therefore be at the discretion of DCC's 3 Waters for approval. He also notes that 3 Waters have historically declined the majority of these applications. Further advice was sought on the provision of water to the proposed development and the applicant has advised that water will be provided from storage tanks collecting roof water and the tanks will be screened from public view. The applicant's agent also notes that Clutha Vets may make application for a water connection at a later date, and should their application be accepted they understand that further development contributions may be payable.
- [81] Mr Budd also advises that a Stormwater Management Plan is required for this development as it is located in a Hazard 2 Flood overlay, and he has recommended a condition for this purpose. I note that the application includes a stormwater management plan that indicates stormwater will be retained on-site such that post-development flows will not exceed pre-development flows.
- [82] Mr Roberts notes that on-site disposal systems will be required for each lot. He advises that the foul drain from proposed Lot 2 can continue discharge to the on-site septic tank and effluent dispersal field within Lot 2 but the exact location for septic tank and effluent dispersal for proposed Lot 2 must be located to confirm it does not cross the proposed allotment boundaries.
- [83] He advises that the foul drainage from proposed Lot 1 shall discharge to its own on-site septic tank and outfall. The application identifies that an area has been provided for a disposal field that is located 50m from the Taieri River (to meet ORC set back requirements).
- [84] In relation to Stormwater Drainage Mr Roberts notes that existing stormwater drainage from proposed Lot 2 is to be confirmed as discharging to an appropriate outfall. He notes



in relation to Lot 2 that the site can discharge its stormwater to the roadside water table on Bell Street. I note that the proposal is for stormwater to discharge within Lot 1 to an existing watercourse within the site. Mr Roberts advises that this would also be suitable.

- [85] Furthermore, he advises any surface water collected or concentrated by building or site works shall not cause nuisance to neighbouring property and must discharge to an appropriate outfall.
- [86] In relation to firefighting there is a fire hydrant in Bell Street opposite the site and another further to the north opposite 48 Bell Street. These hydrants will ensure compliance with firefighting requirements.
- [87] Subject to compliance with any recommended conditions of consent, the adverse effects of the proposal on the City's reticulated infrastructure are considered minor and acceptable.

#### Transportation

- [88] The application was forwarded to the Council's Transport Department for comment. The Transportation Planner, Reese Martin, notes the minor contraventions of 2GP transportation performance standards associated with the proposal and he has considered the transport implications of the proposal in relation to generated traffic, site access parking and manoeuvring, vehicle loading and signage. The Transportation planner is satisfied the adverse effects of the proposal will be less than minor and acceptable subject to the following conditions:

- i. *Each new vehicle access to Lot 1 must be formed to a maximum 9.0m wide, be hard surfaced from the edge of the Bell Street carriageway toward the property boundary for a distance of not less than 5.0m and be adequately drained for its full duration.*
- ii. *Any damage to any part of the footpath or road formation as a result of the demolition or construction works must be reinstated at the applicant's cost.*
- iii. *The surface of all parking, associated access and manoeuvring areas must be formed, hard surfaced and adequately drained for their entirety, and parking spaces permanently marked in accordance with the application plans) except for parking spaces 18-22.*
- iv. *The parking area must be illuminated to a minimum maintained level of 2 lux, with high uniformity, during the hours of operation.*
- v. *Directional line marking, and signage must be installed at each vehicle access so that each respective access is used for entry and exit only.*

Advice notes are also recommended by Mr Martin as follows:

- i. *It is advised that any works within legal road are required to be undertaken by a DCC approved contractor and will require an approved corridor access request.*
- ii. *The vehicle crossing, between the road carriageway and the property boundary, is within legal road and will therefore require a separate Vehicle Entrance Approval from DCC Transport to ensure that the vehicle crossing is 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).*

- [89] Mr Martin has subsequently considered the matters raised in the submission from the Youngs on transport matters including the speed of vehicles, increased potential for accidents, increased heavy vehicles including horse floats and conflict between vehicles

and recreation use. Mr Martin has made the following additional comments in response to the submission points:

- *The presence of horse floats would not be completely out of character for a rural environment such as the environment in which the veterinary clinic is proposed to be constructed in.*
- *Whilst there would be no way of confirming whether or not vehicles are traveling above the posted speed limit without conducting updated average speed readings in this area, regardless of this and in any case there is an expectation that vehicles should be driving to the correct speed and to the conditions of the roading environment which is the case for all roading environments.*
- *The potential concern around an increase in the potential for accidents from vehicles entering and exiting onto this section of Bell Street is directly mitigated by compliant sightlines/sight distances being provided in accordance with Rule 6.6.3.2 (69.0m of sight distance in either direction along a road with a posted speed limit of 50km/h) at each of the new proposed vehicle entrances to the site. For reference sight distances are based on the minimum distance required for a vehicle to see a potential obstacle and react and brake/slow down to avoid a potential collision from a vehicle exiting onto the carriageway and vice versa for vehicles waiting to enter the carriageway and selecting safe gaps. There would also be an expectation that a vehicle following a vehicle turning into the site will be aware of a vehicle exiting the carriageway and react accordingly (i.e. using appropriate following distances).*
- *With regard to potential conflict between pedestrians and cyclists and vehicles entering and exiting the proposed site, there is a large road berm and gravel path located on western side of the road (and not on the same side of the road as the proposed clinic) to safely accommodate and separate cyclist and pedestrian movements from vehicle movements.*

[90] I have visited the site on two occasions and the road is clearly arterial in nature with relatively constant traffic and a good proportion of heavy vehicles. I have relied on and concur with the assessment by Mr Martin and consider the transportation effects of the activity to be less than minor.

[91] I note that at night it is likely the traffic volumes would reduce considerably and that is a consideration for maintenance of amenity with a 24 hour operation proposed for the clinic discussed below.

#### Hazards

[92] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance. In addition, under section 106 of the Resource Management Act 1991, the Council may decline the subdivision consent, or it may grant the subdivision consent subject to conditions, if there is a significant risk from natural hazards.

[93] The assessment of the risk from natural hazards requires a combined assessment of:

- (a) the likelihood of natural hazards occurring (whether individually or in combination); and*
- (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*

- (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

[94] The site is annotated in the Hazards Register.

- Hazard ID 10111: Seismic – Intensified Shaking (Earthquake likely amplification)
- Hazard ID 11407: Seismic – Liquefaction Domain C
- Hazard ID 11582: Flood – Overland Flow Path (Area 1B)

and on the 2GP Maps as being subject to

- Hazard 2 (flood) Overlay Zone
- Swale Mapped Area (Area 1C - West Taieri overland flow paths)

[95] The application was consequently considered by the Council's consultant engineer, Stantec New Zealand Ltd. The Civil Engineer, Edward Guerreiro, advised the two main hazards with the site were liquifaction and flooding. He noted that these hazards can be addressed through buiding foundation design and a suitable minimum floor level for the proposed building. He advises the the proposal will not create or exacerbate instabilities on this or adjacent properties, and does not need to be declined on the ground of known natural hazards.

[96] The site is subject to a Hazard 2 Flood Overlay and the proposed veterinary services activity is a Natural Hazard Potentially Sensitive Activity under the Plan. The applicant in response to a futher information requeust in relation to the hazard assessment has obtained a report from Fluent Solutions on the effects of the potential flood hazard. The report recommended the following:

- *Based on the evidence provided above, the risks of flood hazard to the proposed vetinary development site are considered minor and meet the requirements for the minimal floor levels for flood vulnerable areas as described in the GHD report for DCC.*
- *The development includes onsite stormwater detention with post development flows, with allowance for climate change.*
- *The elevation of the building floor level needs to comply with the Building Code E1/AS1 being at least 150mm above the level of the crown of the adjacent road.*

[97] The report from Fluent Solutions confirms Mr Guerreiro's initial advice that the flooding risks can likely be managed by minimum floor levels. Having regards to these assessments, it is considered that there any risks from natural hazards can be appropriately mitigated through the imposition of appropriate conditions and advice notes as recommended by Stantec and in the Fluent Solutions report. The risk from natural hazards is assessed as low and acceptable.

*National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*

[98] The site is identified as a former market garden site and a possible HAIL site in relation to HAIL category A10 that relates to the application of persistent pesticides. Other potential contamination sources are identified as lead paint around buildings, fill material, farming activity and asbestos used in buildings.

- [99] Consent is required for the proposed subdivision/change of use and soil disturbance on the site as a discretionary activity as no PSI or DSI reports are provided, and the proposed disturbance exceeds permitted thresholds.
- [100] Given the type of contamination, and as the commercial land use on Lot 1 will cover large areas of the site with a large building and extensive parking and access areas, the human health implications for the future commercial activity on this lot appear minimal. The existing land usage on Lot 2 is not expected to change. The applicant has undertaken testing of identified burn piles on Lot 1 and remediated these areas which were identified as potential contamination sources by the Council's consultants. Precautions will still need to be taken during the construction phase to ensure effects are managed to protect workers and surrounding sites and to secure the appropriate disposal of any potentially contaminated soils, but the Council's expert is now satisfied that this can be achieved through a Site Management Plan and an accidental discovery protocol, and no further testing is needed following the remediation of the burn piles.
- [101] I consider the proposed commercial land use is relatively insensitive to the likely agricultural contaminants and consequently the potential contamination pathways will be primarily confined to the construction phase. The potential risks to human health during construction can be managed through conditions securing best practice in relation to soil disturbance, transport and disposal of potentially contaminated soil under a management plan. Consequently, with conditions in place the risk of adverse effects on human health are likely to be low.

#### Amenity Values and Character

- [102] The existing residential density for the site is already significantly greater than the Plan envisages for a rural zoned site, and this is also the case for the other rural zone sites on the eastern side of Bell Street between the Township and Settlement zone boundary and Huntly Road resulting in the area having a large lot residential/rural residential character. The proposal is to further fragment 60 Bell Street and establish a large veterinary services facility. While the amenity effects will be mitigated over time through landscaping there will be a further loss of openness and minor impacts on rural amenity values and character will result. This has been considered in more detail in the assessment of the veterinary services activity below.
- [103] I note that from an amenity perspective the current zoning of the land as rural by the 2GP could be argued as being inconsistent with its existing character and given the existing site sizes a rural residential zoning may have been more appropriate for the enclave. I acknowledge the presence of High Class Soils may have been a determining factor in assigning a rural zoning to the area, but in any event, the appropriateness of the zoning is not a matter for the outcome of this application to determine.

#### **Earthworks**

##### Effects on visual amenity

- [104] The site has gentle contour, but earthworks are required for establishing a building platform. These are estimated by the applicant at 300m<sup>3</sup>. This level of earthworks is not significant on a site of this size and the visual impacts will be temporary and mitigated by the presence of roadside vegetation. The visual effects on the earthworks are assessed as being less than minor.

##### Effects on amenity of surrounding properties

- [105] The earthworks are sufficiently distant from the boundaries of surrounding properties and sufficiently to avoid any direct effects on neighbouring sites and the amount of excavation, although significantly exceeding flood hazard thresholds, is modest in relation to the size of the site. If there are conditions in place to ensure prompt reinstatement of grass cover any adverse effects on surrounding sites will be temporary and less than minor.

*Effects on the stability of land, buildings, and structures*

- [106] The site has a gentle contour, and the proposed earthworks are considered sufficiently distant from the boundaries of surrounding properties and sufficiently shallow to avoid any direct effects on the stability of land building and structures on neighbouring sites.

*Effects on biodiversity values*

- [107] The area where the proposed earthworks are to be undertaken is currently in pasture and biodiversity values are relatively low. The works will not result in the clearance of indigenous vegetation. The proposed earthworks are therefore unlikely to have a material impact on biodiversity values. Ensuring sediment is prevented from entering waterways appears straightforward given the modest level of earthworks and the proposed distance from waterways and this can be secured through conditions. The effects of the proposed earthworks on biodiversity values are therefore considered to be less than minor.

*Risk from natural hazards*

- [108] The earthworks are for the purpose of establishing a building platform and formation of an access and parking areas. They will not result in a material change in the level of the ground and the Fluent Solutions Report notes that the proposed subdivision and veterinary development poses minimal risks at the most, of creating or transferring flood risk to other sites. Sediment Controls are considered appropriate to minimise the risk of sediment transfer onto other sites.

**Construction**

*Effects on rural character and visual amenity; Effects on the amenity of surrounding properties.*

- [109] The proposed building is large and relatively sophisticated when compared to a typical farm building so the construction phase effects will be longer than is typical for rural zone construction. Nevertheless, the effects will be temporary, and the building for the most part complies with rural setback standards. Effects from the construction activity and associated scaffolding are considered to be less than minor.

*Reverse sensitivity effects; Positive effects in supporting a farming or conservation activity.*

- [110] Reverse sensitivity effects are not anticipated and the construction of a new purpose-built veterinary clinic in Outram which is near extensive farming activity on the Taieri Plain will support farming activity in the area.

*Effects on the safety and efficiency of the transport network (transport)*

- [111] The contravention of the construction standard in relation to the duration of scaffolding during construction is not considered likely to impact on the transport network. If necessary, conditions can be used to protect the road networks during the construction phase. Effects are assessed as less than minor.

### Construction Noise

- [112] The application identifies an expectation that construction noise performance standard will be complied with. This seems reasonable given the distances to rural dwellings and the residential zone across Bell Street. The site is relatively level and construction techniques are not likely to require extensive earthworks or noisy piling equipment.

### **Veterinary Services Activity**

#### Effects on rural character and visual amenity

- [113] The proposed veterinary clinic is large in scale, but the applicant considers that with landscaping in place and with an appropriate height and colour scheme for the building the effects of the building and parking areas on rural amenity will be no more than minor and acceptable. There is reliance initially placed on the screening mitigation provided by existing poplars along the front of the site which will be replaced with landscaping installed after completion of the new facility.
- [114] While the building proposed is very large being over 900m<sup>2</sup> in area and extensive parking areas are proposed, it is well setback from the road frontage, and it is located centrally on the proposed site largely complying with setback rules. The effects on rural character and visual amenity have been considered by the Council's Urban Designer Maria Callau. She notes that:

*The one storey building has a simple shape with a series of gable roofs parallel and perpendicular to the road. The building includes a range of cladding materials including vertical metal cladding (dark colour) combined with horizontal cedar boards. In addition, corrugated metal roofing and windows will match the metal cladding dark colour. The main entrance is clearly defined by a gable roof with two shist stone or brick columns supporting an overhang. The gable wall includes the sign of the veterinary services. Parking is provided around the building with areas for vegetation along all boundaries. Vehicle access and egress is through the north and south corners of the site.*

- [115] Ms Callau considers the bulk, location, form and materials used are appropriate to the context of the site. She considers the proposal will mitigate any adverse effects on the amenity of residential activity on surrounding properties through appropriate site layout, building form, selection of materials and boundary treatment. Ms Callau notes that views from Bell Street are restricted by existing vegetation and that most of these trees will be initially retained.
- [116] Mr Callau advises that in her view the proposal would have no significant adverse effects regarding matters of urban design. I have visited the site and I agree with Ms Callau that significant visual amenity effects are not likely to arise from the proposed development, but there will be an impact on rural amenity values given the scale of the building and its associated parking areas. The building will also be illuminated at night and there will potentially be activity on the site at night as a 24-hour seven day a week service is proposed. Landscape screening will assist in mitigating visual effects, but this proposal will reduce naturalness and increase non-rural activity in this area, meaning it will be less rural in character than it already is. These adverse effects are assessed as minor in the wider context, but ensuring the proposed landscape mitigation is effective in screening the building and its illuminated parking area is considered important to achieving successful integration of the building in its setting.

### Effects on amenity of surrounding properties

- [117] Amenity implications for surrounding sites were assessed in the Section 95 assessment on the basis of the indicated compliance with District Plan noise and lighting standards which are discussed in more detail below, and the mitigation proposed by the applicant in relation to landscaping. Minor effects on amenity values were identified having regard to the large scale of the building and the time it would take for the landscaping to be effective. While no significant adverse amenity effects are expected from the proposed development, four parties were identified as being likely to experience minor effects until landscaping was effective. The location of these properties is shown in Figure 3 below:



**Figure 3: Aerial Photograph with site with affected parties identified.**

- [118] The applicant has obtained affected party approval from three of the four parties identified as affected and the adverse effects of the activity on these parties cannot be considered. The remaining party has submitted in opposition to the veterinary clinic component of the proposed activity. The submission from the Youngs has identified potential amenity issues that are summarised as follows:
- The operating hours are not clearly defined.
  - There is the potential for increased traffic and noise at night and on weekends.
  - The plans include an outdoor dog run. If large numbers of dogs are kept onsite, and potentially overnight, this could generate additional noise.
  - A pet cremation service for pet owners may be established on the site.
- [119] The submission notes concerns about the commercial nature of the activity but not the scale and appearance of the building. Regardless the building is large for the area, and I consider landscaping is important to maintaining local amenity values. To mitigate effects on these properties the applicant proposes that the majority of the existing landscaping along the frontage of the subject site will be initially maintained during construction and then replaced by site landscaping with native plants. A planting plan condition is proposed by the applicant to secure effective long term landscape mitigation. This approach is supported and the inclusion of a landscape plan in the conditions is recommended should consent be granted.

- [120] If a plan prepared by a qualified professional is effectively implemented, I consider that this will mitigate rural amenity and character impacts on surrounding sites, but the planting will take time to establish and views into the site will be possible through the vehicle access even once landscaping is established. Overall, the effects will be minor with appropriate landscaping in place.
- [121] Signage is proposed that complies with zone performance standards that allow one freestanding sign and one sign on the building.
- [122] In relation to the submitters concern that a pet cremation service may be established, this is possible as this service is offered by some veterinary practices. As an example, the veterinary clinic at 1 Dukes Road South provides such a cremation service with the nearest dwelling to that activity being approximately 100m away.
- [123] The application and the development plans do not identify that a crematorium is proposed, and it could be simply precluded through a condition if the panel is concerned about such an activity but considering granting consent to the proposed land use. I note that the development plans provided are not specific in relation to the activities to be undertaken within the building, and I consider it would be useful if the applicant could clarify the activities to be undertaken within the building and whether a cremation service might be contemplated in the future, when planning evidence or submissions are provided in the evidence exchange.
- [124] The applicant proposes to manage light spill from exterior lighting to comply with District Plan limits. It appears feasible to manage light spill from exterior lighting through appropriate placement and directional controls and control of light spill will be also assisted by the proposed landscape planting. I note that if the panel is considering granting consent and it is considered necessary, a commissioning test could be included as a condition of consent to demonstrate compliance with the light spill performance standard.

#### Operational Noise

- [125] The application identifies that the proposal will comply with land use performance standards for noise in a rural zone that are specified in the 2GP. Given the separation distances to rural zone dwellings and residential zoned sites compliance with noise limits appears feasible. I note that the potential for noise issues to arise is more likely to be associated with night time activity on the site when noise limits are more restrictive to protect sleep and the background noise level from traffic along Bell Street will be lower.
- [126] The application specifies that the activity is proposed to be a 7-day 24hr operation and notes that no loading of the bulk store will occur at night, but there are no other details provided about night time or weekend activity. I agree with the submitters that there is a lack of certainty around night time and weekend activity having regard to the proximity of the residential zone. Given the lower noise limits at night and the proximity of a residential zone, I consider specific operational controls on some activities (e.g. holding of dogs in the dog run) may be appropriate in addition to noise limits to ensure unreasonable amenity impacts and sleep interference from noise do not occur.
- [127] The submission from the Youngs highlights concerns about the presence of an outdoor dog run in the development plans and this would be a concern if dogs are to be held outside the facility overnight. From my previous experience working in the field of environmental noise kennels are a very common cause of noise complaints, but I can't recall a noise complaint from a veterinary practice.



- [128] Concerns are also raised by the Youngs in relation to staff activity and vehicle movements. I expect that such movements will be able to comply with required noise limits, but I agree that more detail should be provided by the applicant on the days and hours of operation and the level of activity proposed in relation to nighttime and weekend activity, as this may assist in identifying areas where operational restrictions are appropriate.
- [129] I consider that noise effects from the activity can likely be managed to ensure unreasonable noise does not impact on amenity values, but uncertainty exists in relation to proposed nighttime and weekend activity on the site. I recommend that the applicant consider the matters raised by the submitter and in the exchange of evidence clarify the extent of likely night time and weekend activity, and outline where it may be possible to volunteer additional operational controls can be to ensure that any night time noise emissions are acceptable.

*Effects on the safety and efficiency of the transport network*

- [130] The transportation effects have been assessed in the subdivision section above and are considered by the Council's Transport Department to be less than minor. The road is regularly used by heavy vehicles and local residents, and while the activity will generate increased traffic on the road the impact on safety and efficiency is assessed as being less than minor in relation to the existing vehicle activity already using the road.

**Positive Effects**

- [131] Positive effects will accrue with the establishment of a veterinary clinic in that the clinic will provide an up to date modern veterinary facility to support the local farming, lifestyle and residential communities, as well as areas further afield such as Mosgiel and Middlemarch.

**Cumulative Effects**

- [132] 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".*

- [133] 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'.
- [134] In relation to amenity values the introduction of a large building and car parking on the site at 60 Bell Street will further reduce openness and naturalness that is contributing to amenity values and character. The amenity values in the area are already reduced by existing development to be consistent with a large lot residential or rural residential amenity and with landscaping in place cumulative effects are assessed as being minor.
- [135] In relation to subdivision and rural productivity the rural land is already at a density that the District Plan and the National Policy Statement – Highly Productive Land seek to avoid. The further subdivision of any site within the enclave will further reduce the limited potential for productive use of the soils and on that basis, there will be a cumulative effect arising from the proposed subdivision of 60 Bell Street.

[136] In this case the applicant's position is that the subdivision of 60 Bell Street that will facilitate the development of the proposed clinic, will have no more effect on rural productivity than the establishment of a veterinary clinic on the unsubdivided site, for which there is a restricted discretionary pathway that does not require an assessment of productivity.

[137] I note that there is no permitted baseline for the proposed subdivision, or the proposed land use activity, and consequently there are no effects to be disregarded. Therefore, the proposal is assessed on the basis that 4000m<sup>2</sup> of highly productive land will be removed from the highly productive land resource. I acknowledge that I am not a productivity expert, but given the location of this loss in the context of an already compromised land resource, used for lifestyle activity that is likely to continue for foreseeable future, I consider the cumulative adverse effect is likely to be minor.

### **Effects Assessment Conclusion**

[138] After considering the likely effects of this proposal above, overall, I consider it is likely that the adverse effects of the proposal can be appropriately mitigated by conditions of consent to be no more than minor and acceptable in the receiving environment. To provide greater certainty that effects will be minor and acceptable, further information and clarifications are sought from the applicant in relation to the housing of animals on the site, the nature of the activities to be undertaken within the building and the level of activity on the site at night and at the weekends.

### **OFFSETTING OR COMPENSATION MEASURES ASSESSMENT**

[139] 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.

[140] 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))**

[141] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application. The 2GP is well advanced and largely beyond legal challenge. The relevant 2GP rules in this case are all deemed operative. The 2GP objectives provide comprehensive and targeted coverage of the relevant issues and therefore, while the operative Plan objectives and policies have been considered, no weight has been given to the objectives and policies of the operative Plan. Only the 2GP objectives and policies considered relevant are assessed in detail below.

[142] **Objective 4.2.1 and Policy 4.2.1.1** that seeks to enable temporary activities while minimise adverse effects on zone amenity and character, people's health and safety and the safety and efficiency of the transportation network.

The proposal is considered to be consistent with this objective and policy.

- [143] **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.

The proposal has been assessed by the Council's Transportation Planner who is satisfied that adverse effects on the proposal on the transport network will be less than minor. The proposal is **consistent** with this objective and these policies as it will maintain the safety and efficiency of the transport network for all travel methods.

- [144] **Objective 8A.2.1 and Policies 8A.2.1.1 and 8A.2.1.3 (Earthworks Section)** These seek to avoid the impact of earthworks on visual amenity and character, surrounding properties and the stability of land and buildings.

The proposed earthworks have been assessed and no issues of stability are identified. Any impacts on visual amenity and character of will be temporary and minor. Amenity effects on surrounding properties are expected to be temporary, minor and can be managed through conditions of consent. The proposal is therefore considered to be consistent with this objective and these policies.

- [145] **Objective 9.2.1 and Policies 9.2.1.1., 9.2.1.2, 9.2.1.3 and 9.2.1.5 (Public Health and Safety Section)**. These seek to ensure that land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure.

The activity on Lot 2 is existing and the proposed activity on Lot 1 will be self-sufficient in relation to the supply of water and disposal of wastewater. Stormwater will also not discharge to Council owned infrastructure. The proposal will therefore maintain efficiency and affordability of public water supply, wastewater and stormwater infrastructure. The proposal is considered to be consistent with this objective and these policies.

- [146] **Objective 9.2.2 and Policy 9.2.2.8 (Public Health and Safety Section)**. These seek to ensure that land use, development and subdivision activities maintain or enhance people's health and safety, and have access to suitable water supply for firefighting purposes.

The proposal is considered to be consistent with this objective and these policies.

- [147] **Objective 9.2.2 and Policies 9.2.2.1 and 9.2.2.4 (Public Health and Safety Section)**. These seek to require activities to avoid adverse effects of noise and light spill on people's health or where avoidance is not practicable ensure any adverse effects are insignificant.

Subject to any uncertainty regarding night time operations being resolved, the proposal is considered to be consistent with this objective and policy if there are appropriate conditions in place to ensure effective management of noise and light spill effects.

- [148] **Objective 9.2.2 and Policies 9.2.2.14** these seek to ensure that activities are managed in accordance with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

The proposal is considered to be consistent with this objective and policy.

- [149] **Objective 9.2.2 and Policies 9.2.2.9**. These seek to ensure earthworks in a groundwater protection area do not disturb or contaminate groundwater.

Only shallow earthworks are proposed to facilitate the development. The proposal is considered to be consistent with this objective and policy.

- [150] **Objective 10.2.1 and Policies 10.2.1.1 (Natural Environment)** These seek to maintain or enhance biodiversity values and only allow development where biodiversity values are maintained or enhanced.

The proposal is considered to be consistent with this objective and policy.

- [151] **Objective 11.2.1 and Policies 11.2.1.3, 11.2.1.5 and 11.2.1.12 (Natural Hazards Section)**, which seek to ensure the risk from natural hazards, including climate change, is minimised, in the short to long term.

The Proposed 2GP planning maps indicate that the property is within the Hazard 2 – Flood overlay zone. The risk of the flood hazard has been considered by the Council’s consulting engineers Stantec NZ Limited and the applicant has supplied a report on the flood risk from Fluent Solutions. Both experts consider the flood risk can be managed by an appropriate minimum floor level and stormwater management. Displacement of flood water that would potentially impact on other properties is not identified as a concern in the expert advice. The proposal is therefore considered to be **consistent** with this objective and these policies.

#### Rural Section

- [152] **Objective 16.2.1**, which seeks to reserve rural zones for productive rural activities and enhancement of the natural environment along with certain activities that support the wellbeing of communities and if they are appropriate for a rural environment.

- **Policy 16.2.1.2**, which seeks to provide for activities including veterinary services in a rural zone where the effects are adequately managed in line with zone and overlay zone objectives and policies.
- **Policy 16.2.1.5**, which seeks to avoid subdivision activities that contravene minimum site size unless the proposal is provided for under Policy 16.2.1.10, or the subdivision with not result in non-complying sites and residential development potential being increased and productivity and development potential are maintained.
- **Policy 16.2.1.7**, which seeks to avoid residential activity contravening density standards unless it is surplus dwelling subdivision or is associated with significant biodiversity enhancement and protection and/or significant positive effects for rural productivity.
- **Policy 16.2.1.10**, which seeks to only allow the subdivision of a surplus dwelling where the subdivision maintains amenity values and productive potential and any effects on highly productive land are insignificant.

- [153] The veterinary clinic element of the proposal finds support from Policy 16.2.1.2 as a *veterinary services* activity is an activity that supports the well-being of communities and rural land use. The density impact of the existing dwelling is also not considered to be directly opposed to policy 16.2.1.7 which provides for surplus dwelling subdivisions. The subdivision activity appears to meet the definition of a surplus dwelling subdivision as it is defined as *the subdivision of land containing an existing surplus dwelling from a rural property where the subdivision will not result in any additional residential development potential*. Residential development potential is not considered to be increased in this case as a residential land use on the vacant proposed Lot 1 is a non-complying activity. The

subdivision of a surplus dwelling results in an additional residential activity being a permitted activity and this can sometime arise under the 2GP rules as the land use minimum requires a smaller area than the minimum site size for subdivision. This situation appears to be what the definition is protecting against.

- [154] The subdivision proposal will conflict more directly with Policy 16.2.1.5 that relates to subdivision, as this policy links to Policy 16.2.1.10 which in turn links to Policy 16.2.4.3 a, b, and c related to protection of high class soils. Policy 16.2.4.3 includes suitability tests for a surplus dwelling subdivision which are not met by the proposal, as it will not maintain or enhance rural productivity and will likely have a more than insignificant effect on highly productive land.
- [155] In relation to Policy 16.2.1.10 the subdivision itself would likely maintain amenity values and productive potential if Lot 1 it was intended to be reserved for a farming activity, although Lot 2 is larger than would be desirable for maintenance of overall productive potential. However, as the subdivision is intended to facilitate a land use change that is not rurally productive, the overall proposal conflicts with Policy 16.2.1.10 as the proposed land use will not maintain productive potential and the effects on highly productive land are likely to be greater than insignificant as required under Policy 16.2.4.3.
- [156] The subdivision element of the proposal therefore is considered to be contrary to Policy 16.2.1.5, as it will not meet the exemptions under Policy 16.2.1.10 and it will increase the number of sites that contravene minimum site size.
- [157] I note that the most direct policy conflict arises from the subdivision and not the proposed land use and if the veterinary clinic was proposed on the unsubdivided parent title, I consider it would not be as clearly contrary to this objective and its policies.
- [158] **Objective 16.2.2**, which seeks to minimise potential for conflict within rural zones and adjoining residential zones by minimising reverse sensitivity and ensuring acceptable amenity values.
- **Policy 16.2.2.2** requires buildings that house animals to be set back from site boundaries an adequate distance to ensure that any adverse effects on sensitive activities on adjoining sites, such as residential activities, are avoided or, if avoidance is not practicable, are no more than minor.
  - **Policy 16.2.2.3** requires appropriate boundary setback to ensure acceptable amenity on surrounding sites.
  - **Policy 16.2.2.5** seeks to only allow specified activities including veterinary services where adverse amenity effects are avoided or adequately mitigated.
- [159] The proposal is considered to be largely consistent with this objectives and its policies. There is a contravention of the rear boundary if a conservative 12m setback is applied but the effects are minimal, and the adjoining property owner to the boundary contravention has provided an affected party approval.
- [160] **Objective 16.2.3** which seek to ensure rural character and amenity of rural zones are maintained or enhanced.
- **Policy 16.2.3.1** requires buildings to be setback and of a height that will maintain rural character and visual amenity.

- **Policy 16.2.3** that requires residential activity to be at a density that maintains rural character and amenity.
- **Policy 16.2.3.7** Require ancillary signs to be located and designed to maintain rural character and visual amenity, including by being of an appropriate size and number to convey information about the name, location, and nature of the activity on-site to passing pedestrians and vehicles and not being oversized or too numerous for that purpose.
- **Policy 16.2.3.8** this seeks to allow subdivision activities where the subdivision is designed to ensure any associated future land use and development will maintain or enhance the rural character and visual amenity of the rural zones.
- **Policy 16.2.3.9** this require activities to be designed and operated to ensure that any adverse effects from light spill on rural character and amenity, and the ability of people to view the night sky, will be no more than minor.

[161] The proposal is considered to be largely consistent with this objectives and its policies. I note that while there is an “only allow” policy covering amenity objectives for community activities, service stations and visitor accommodation (Policy 16.2.3.6) it does not extend to veterinary services. While there is a contravention of the rear boundary if a conservative 12m setback is applied but the effects of this convention are minimal. Overall, the already compromised character and visual amenity of the proposed location will be maintained with appropriate landscape mitigation in place.

[162] **Objective 16.2.4** that seeks to maintain or enhance the productivity of rural zones.

- **Policy 16.2.4.1** that requires earthworks in a high class soils mapped area to retain soils on the site.
- **Policy 16.2.4.2** that seeks to only allow activities other than farming on highly productive land where:
  - the scale, size and nature of the activity means that any loss of current or potential future rural productivity would be:
    - insignificant in any high class soils mapped area; and
    - no more than minor in other areas of highly productive land; unless
  - for mining, the activity must locate on highly productive land due to operational requirements and there are no practicable alternative locations.
- **Policy 16.2.4.3** that seeks to only allow subdivision activities where the subdivision is designed to ensure any future land use and development will:
  - maintain or enhance the productivity of rural activities;
  - maintain highly productive land for farming activity, or ensure the effects of any change in land use are:
    - insignificant on any high class soils mapped area; and
    - no more than minor on other areas of highly productive land;

- maintain land in a rural rather than rural residential land use; and
  - not increase the potential for reverse sensitivity.
- **Policy 16.2.4.4** that requires residential activity in the rural zones to be at a density that will not, over time and/or cumulatively, reduce rural productivity by displacing rural activities.

[163] There is conflict with this objective and policies 16.2.4.2 and 16.2.4.3 in that the proposal may have a more than an insignificant effect on the maintenance of highly productive land for farming. It will not ensure 4000m<sup>2</sup> of highly productive land is maintained for farming activity. Insignificant is not defined in the Plan but the common meaning is “*small and not important*” and equating it with less than minor used in the consents context or minimal appears appropriate. I note that the applicant’s policy assessment identifies that the productivity loss will be no more than minor, but it does not discuss the loss in relation to the “insignificant” effects policy direction. In the absence of evidence that the loss is an insignificant effect, I consider the subdivision proposal is at least inconsistent and likely to be contrary to Policies 16.2.4.2 and Policy 16.2.4.3.

[164] I also note in relation to the proposed land use that Policy 16.2.4.2 does not identify an exception for a veterinary services activity, and it appears to be captured as it is not a farming activity. In relation to a restricted discretionary rules framework for veterinary services activity, that does not allow the consideration of the adverse effects on high-class soils or productivity in its discretion, this seems a little incongruous. As a passing comment, I note that given the large areas of rural zone that would provide for establishment of a veterinary clinic on land that is not highly productive, including the consideration of highly productive land in the discretion for determining of the suitability of the location for a veterinary clinic seems sensible and would be a useful means of addressing this incongruity.

### **Overall Objectives and Policies Assessment**

[165] Given the relevant 2GP policies and objective are deemed operative no weight has been given to the operative Plan objectives and policies. There are no identified coverage issues identified with the 2GP policy framework although it is acknowledged that the updated Regional Policy Statement and detailed mapping of highly productive land under the NPS-HPL may result in some minor changes in the future.

[166] The proposal is assessed as being consistent with transport, temporary activities (construction), earthworks, public health and safety and natural hazards objectives and policies but the critical objectives and policies in this case are related to the rural zone and highly productive land.

[167] In relation to the rural zone section the proposal presents as being consistent with objectives and policies for the maintenance and rural amenity in the context of an environment which is already rural residential in character and as the development of a veterinary clinic is supported by policy 16.2.1.2.

[168] Although the proposed subdivision does not comply with the rules that provided for this type of subdivision, the proposal appears to meet the definition of a surplus dwelling subdivision which is as follows:

*The subdivision of land containing an existing surplus dwelling from a rural property where the subdivision will not result in any additional residential development potential.*

There is no potential to develop Lot 1 for residential activity without consent, as it is significantly undersized and therefore it arguably not contrary to Policy 16.2.1.7. However, if the veterinary clinic is not established, or subsequently closes, the small size of this lot may be likely to raise expectations of future owners that residential activity in some form will eventually be permitted.

- [169] The proposal is considered to be directly opposed to policies 16.2.1.5, 16.2.1.10, 16.2.4.2 and Policy 16.2.4.3. As the proposal is assessed as contrary to key rural zone objectives and policies relating to subdivision and the protection of rural productivity and highly productive land that are directive in nature. As a result, I have considered the relevant caselaw in relation to the consideration of directive policies including *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd 2014*, *R J Davidson Family Trust v Marlborough District Council [2018]*, *Port Otago Limited v Environment Defence Society* and the *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency*.
- [170] The case law is clear that in the case of directive policies that seek to avoid activities, avoid means not allow and an overall judgment approach is therefore not appropriate. I also consider that in this case there is no significant conflict between directive policies within the 2GP that would require a structured analysis to reconcile or determine which policies prevail.

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

- [171] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements.
- [172] The Otago Regional Policy Statement 2019 was made operative on 4 March 2024. Objectives and Policies relevant to the proposal include Objective 4.1 (Natural Hazards) and its policies, Objective 5.3 (land management and protection for economic development) and its policies and Objective 4.6 and its policies where they relate to contaminated land.
- [173] In relation to significant soils the Policy Statement identifies that the Regional Council will be responsible for identifying and managing the significant soils within Otago and will co-operate with local authorities such as the DCC to secure effective management of these soils. Objectives 5.3 and Policy 5.3.1 seeks to enable primary production in rural areas and minimise subdivision that impacts on productive capacity and the loss of significant soils.
- [174] Having considered the relevant objectives and policies within the Policy Statement I note that there is generally good alignment with the 2GP and its objectives and policies. The proposal is considered to be generally consistent with the Policy Statements relevant objectives and policies, but similar to the 2GP there are conflicts in relation to highly productive land. The proposal it is considered to be inconsistent with Policy 5.3.2 of the Policy Statement as the proposal will not minimise subdivision or the loss of significant soil in the proposed land use change.
- [175] Decisions on the Proposed Otago Regional Policy Statement 2021 were released on 27 March 2024. The decisions introduce an updated policy framework that is aligned with National Policy Statements including the NPS-HPL. A number of appeals on the decisions are still outstanding.
- [176] In relation to highly productive land, it seeks to protect the availability and productive capacity of highly productive land now and for future generations to ensure that the



availability and capability of Otago's highly productive land is maintained (LF-LS-O11 -land and soil). Its policies also seek to prioritise highly productive land for land based primary production and it seeks to restrict the establishment of non-rural activities as specified in UFD-P7 below.

#### *UFD-P7 –Rural Areas*

*The management of development in rural areas:*

- (2) maintains rural areas as places where people live, work and recreate and where a range of activities and services are required to support these rural functions, and provide for social and economic wellbeing within rural communities and the wider region,*
- (3) prioritises land-based primary production on highly productive land in accordance with the NPS-HPL, except as provided for in (5) below,*
- (5) enables the use by Kāi Tahu of Native Reserves and Māori Land, for papakāika, kāika, nohoaka, marae and marae related activities in accordance with MW-P4,*
- (6) restricts the establishment of non-rural activities which could adversely affect, including by way of reverse sensitivity or fragmentation, the productive capacity of highly productive land, or existing or anticipated primary production and rural industry activities, except as provided for in (5) or the NPSHPL.*

[177] The proposal is assessed as being inconsistent with the policy statement in relation to highly productive land but the policies are not sufficiently directive to indicate the proposal is contrary to the Proposed Otago Regional Policy Statement 2021.

[178] I have also considered the proposal against natural hazards and contaminated land and as the risk associated with these matters is assessed as low. It is considered the proposal is generally consistent with the objectives and policies relating to natural hazards and contaminated soil.

#### **National Policy Statement - Highly Productive Land**

[179] The site has a productivity classification of LUC-1 and as a result the subdivision and land use proposals are subject to the requirements of the National Policy Statement for Highly Productive Land. Under the Policy Statement Territorial Local Authorities must avoid the subdivision of highly productive land unless specified criteria are satisfied.

[180] The relevant provisions of the policy statement for subdivision is as follows:

#### **3.8 Avoiding subdivision of highly productive land**

*(1) Territorial authorities must avoid the subdivision of highly productive land unless one of the following applies to the subdivision, and the measures in subclause (2) are applied:*

*(a) the applicant demonstrates that the proposed lots will retain the overall productive capacity of the subject land over the long term:*

*(b) the subdivision is on specified Māori land:*

*(c) the subdivision is for specified infrastructure, or for defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990, and there is a functional or operational need for the subdivision.*

*(2) Territorial authorities must take measures to ensure that any subdivision of highly productive land:*

*(a) avoids if possible, or otherwise mitigates, any potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*

*(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on surrounding land-based primary production activities.*

*(3) In subclause (1), subdivision includes partitioning orders made under Te Ture Whenua Māori Act 1993. 12 National Policy Statement for Highly Productive land 2022*

*(4) Territorial authorities must include objectives, policies, and rules in their district plans to give effect to this clause.*

[181] The relevant provision of the policy statement for land use is as follows:

### **3.9 Protecting highly productive land from inappropriate use and development**

*(1) Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.*

*(2) A use or development of highly productive land is inappropriate except where at least one of the following applies to the use or development, and the measures in subclause (3) are applied:*

*(a) it provides for supporting activities on the land:*

*(b) it addresses a high risk to public health and safety:*

*(c) it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:*

*(d) it is on specified Māori land:*

*(e) it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:*

*(f) it provides for the retirement of land from land-based primary production for the purpose of improving water quality:*

*(g) it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:*

*(h) it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:*

*(i) it provides for public access:*

*(j) it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:*

*(i) the maintenance, operation, upgrade, or expansion of specified infrastructure:*

*(ii) the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990:*

*(iii) mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:*

*(iv) aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.*

*(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:*

*(a) minimises or mitigates any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district; and*

*(b) avoids if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.*

*(4) Territorial authorities must include objectives, policies, and rules in their district plans to give effect to this clause.*

[182] Section 3.10 provides an exemption from the subdivision for long term constraints as follows:

**3.10 Exemption for highly productive land subject to permanent or long-term constraints**

*(1) Territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if satisfied that:*

*(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and*

*(b) the subdivision, use, or development:*

*(i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and*

*(ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and*

*(iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and*

*(c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

*(2) In order to satisfy a territorial authority as required by subclause (1)(a), an applicant must demonstrate that the permanent or long-term constraints on economic viability cannot be addressed through any reasonably practicable options that would retain the productive capacity of the highly productive land, by evaluating options such as (without limitation):*

*(a) alternate forms of land-based primary production:*

*(b) improved land-management strategies:*

*(c) alternative production strategies:*

*(d) water efficiency or storage methods:*

*(e) reallocation or transfer of water and nutrient allocations:*

*(f) boundary adjustments (including amalgamations):*

*(g) lease arrangements.*

*(3) Any evaluation under subclause (2) of reasonably practicable options: (a) must not take into account the potential economic benefit of using the highly productive land for purposes other than land-based primary production; and*

*(b) must consider the impact that the loss of the highly productive land would have on the landholding in which the highly productive land occurs; and*

*(c) must consider the future productive potential of land-based primary production on the highly productive land, not limited by its past or present uses.*

*(4) The size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent or long-term constraint.*

*(5) In this clause:*

*landholding has the meaning in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020*

*long-term constraint means a constraint that is likely to last for at least 30 years.*

[183] In this case an existing dwelling is to be subdivided off a small rural site of 9100m<sup>2</sup> to create a 4000m<sup>2</sup> vacant site for a proposed veterinary clinic. The application does not include a productivity assessment and the applicant's agent position is that the site is a rural allotment already significantly compromised with respect to minimum site size for the rural zone in which it is located, and that the proposal will maintain its productivity. While no NPS-HPL assessment was initially provided, the applicant's agent subsequently assessed the proposal against the NPS-HPL in response to a draft further information request with significant reliance being placed on the advice provided by the Environment Court in *Gray and Gray-Sinclair vs Dunedin City Council*<sup>2</sup>.

[184] The applicant's agent Ms Peters considers the proposed activity is not 'inappropriate' in terms of the NPS-HPL definition and that the proposed activity, being a subdivision to provide a lot for a large animal veterinary practice is consistent with the exclusions in sub-clauses (a) and (g) of Clause 3.9. Ms Peters notes that the proposal may even come within

<sup>2</sup> ENZ-2022-CHC-024.

the further exemption in Clause 3.10(b)(i) due to the small size of the site area. In that regard, Ms Peters notes that the site may not eventually qualify for inclusion as highly productive land in maps yet to be prepared by the [Otago Regional] Council under clause 3.4 unless it forms part of a large and geographically cohesive area.

[185] Mr Peters also notes that the 2GP does not see the use of this land for a large animal veterinary practice as necessarily inappropriate when considered in the context of Rule 16.3.3.37.a, and its restricted discretionary activity status. This is because the activity will support primary production involving animals in the local area.

[186] The planning policy considerations associated with the proposal were also considered by Paul Freeland from City Development and his advice attached in Appendix 3 was primarily directed to consideration of the proposal's alignment with the NPS-HPL. He considers the NPS-HPL is applicable to the proposed application, and it is his assessment that the proposal is contrary to the NPS-HPL, and therefore it will be very difficult to justify subdivision and loss of highly productive land in this location.

[187] In relation to the applicant's argument that the proposal falls within exclusions (a), (g) in Section 3.9 of the policy statement, this is not accepted. The exception for a supporting activity in (a) relies on the activity supporting productive activity on "that land" not the wider areas as the definition of supporting activity identifies below:

*supporting activities, in relation to highly productive land, means those activities reasonably necessary to support land-based primary production on that land (such as on-site processing and packing, equipment storage, and animal housing)*

[188] The exception in (g) is for a small scale or temporary land use activities. An activity that utilises 4000m<sup>2</sup> of land does not present as small scale.

[189] In respect of the suggestion that the proposal falls within the exemption for long term constraints in Clause 3.10 no economic evidence is provided to support this position.

[190] The objective of the Policy Statement is that highly productive land is protected for use in land-based primary production, both now and for future generations. It was promulgated in response to concerns regarding the loss of productive land through subdivision to create lifestyle properties and this is protected against either through rezoning or the subdivision of rural land in sections 3.7 and 3.8 of the policy statement. Interestingly, it makes no specific concession for subdivision in relation to rural residential or lifestyle already impacted by historical subdivision sites and the implementation guide also suggests that site size is not determinative, except if there is evidence provided that satisfies the tests Section 3.10 of the Policy Statement. This evidence has not been provided.

[191] Having considered the proposal against the policy statement and its exceptions I consider the proposal is contrary to Policy 7.

*Policy 7: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.*

It may also be contrary to Policy 8, but I acknowledge there is an argument that a veterinary clinic is not inappropriate, as it is provided for in the 2GP as a restricted discretionary activity.

*Policy 8: Highly productive land is protected from inappropriate use and development.*

- [192] I note that in relation to the proposed veterinary clinic land use, the application of the policy statement would likely be different if the veterinary clinic was established on the unsubdivided site. This is because the assessment discretion does not extend to consideration of productively and highly productive soil. The MfE implementation guidance on this situation is as follows:

*However, the ability to have regard to the relevant provisions of the NPS-HPL under section 104(1)(b)(iii) is limited to the matters over which discretion is restricted. If a restricted discretionary activity does not have any matters of discretion relating to matters covered by the NPS-HPL, then the NPS-HPL must be recognised in the assessment under section 104 but it is given less weight and it cannot be a reason to decline the application.*

- [193] I also note that in the case referred to by the applicant's agent - G S Gray and K M Sinclair Gray versus Dunedin City Council - the judge identifies that the 2GP did not consider the use of highly productive land for ecological enhancement as necessarily inappropriate given its activity status. A similar argument could be made for the proposed land use but not the subdivision. I also note that the judge placed also placed little store on the MFE guidance material.

## **DECISION MAKING FRAMEWORK**

### **Part 2 Matters**

- [194] In this case I consider that the 2GP has been competently prepared and the Panel can feel assured that there is no need to refer to Part 2 in this case.

### **Section 104D**

- [195] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [196] As discussed above in the assessment of effects, it is considered that subject to clarification of identified areas of uncertainty it is likely that the effects of the proposal will be no more than minor. If these clarifications address the areas of uncertainty, I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and the first 'gateway' test of Section 104D can be met. Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act.
- [197] In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of the Dunedin City District Plan or the proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being contrary to some key objectives and policies of the Rural Zone relating to subdivision. The proposed development therefore does not satisfy the second 'gateway' test outlined by Section 104D.

## **Section 104**

- [198] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will likely be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [199] Section 104(1)(ab) requires the Council to 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. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [200] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be contrary to the key rural subdivision objectives and policies in the Proposed 2GP.
- [201] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with most relevant objectives and policies of the operative and proposed Regional Policy Statements for Otago, but the proposal is inconsistent with policies seeking to minimise subdivision and protect highly productive land.
- [202] Section 104(1)(b)(iii) requires the Council to have regard to any relevant national policy statement. In this report it was concluded that the proposal is contrary to a policy seeking to avoid subdivision of highly productive land in the NPS-HPL.

## **Other Matters**

- [203] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [204] Case law indicates that the Council in determining the application for a non-complying activity, should consider the potential for an undesirable precedent to be set where integrity of the District Plan may be undermined.
- [205] In this regard, I do not consider that the proposed activity represents a major challenge to the integrity of the Dunedin City District Plan. In this case the subdivision proposal is of a significantly undersized existing site for the specific purpose of facilitating the establishment of a veterinary services activity. A veterinary services activity is assigned a restricted activity status in a rural zone, and it is therefore anticipated provided it can acceptably manage its adverse effects. The establishment pressure for veterinary services activities is significantly more limited than for residential land use. Approval of the proposal is therefore unlikely to give rise to a plethora of like application as it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.
- [206] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects. I therefore do not consider that the Hearing Panel needs to be overly concerned about the potential for an undesirable precedent to be set in this regard.

## CONCLUSION & RECOMMENDATION

- [207] Having regard to the above assessment of effects, objectives and policies and relevant other matters, I recommend that the applications SUB-2023-132, LUC-2023-376 and LUC-2023-377 for subdivision and land use consent be declined.
- [208] I have included a schedule of draft conditions in Appendix 4 that may be of assistance to the hearings panel should it come to a different assessment outcome.

## REASONS FOR RECOMMENDATION

- [209] The proposed subdivision is integral to the development proposal preceding the development of a new veterinary clinic on Lot 1 of the subdivision. Both the 2GP and NPS-HPL have directive policies that seek to avoid (not allow) the subdivision of the subject site. The proposal has not clearly demonstrated that it falls within any specified exemptions in relation to these directive policies.
- [210] The relevant caselaw on directive policy is clear that for directive policies that seek to avoid activities, avoid means not allow and an overall judgment approach is not appropriate in determining the proposals consistency with the 2GP and NPS-HPL policy frameworks.
- [211] While I have recommended declining consent on the basis of directive policy guidance in relation to subdivision, I note that the effects assessment indicates that a veterinary clinic is likely to have no more than minor effects.
- [212] While it does not represent a permitted baseline it appears possible that a similar development outcome (dwelling and veterinary clinic) could potentially be achieved on the subject land in the absence of the subdivision. In this scenario a veterinary clinic would be a restricted discretionary land use consent that does not require assessment of productivity and high class soils and in this circumstance the policy conflict with directive 2GP and NPS-HPL policies would be significantly reduced.

Report prepared by:



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John Sule  
**Consultant Planner**

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Date 30 May 2024

Report checked by:



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Campbell Thomson  
**Senior Planner**

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Date 30 May 2024