DUNEDIN CITY
COUNCIL
Kaunihera-a-rohe o Otepoti

50 The Octagon, PO Box 5045, Moray Place
Dunedin 9058, New Zealand
Telephone: 03 477 4000, Fax: 03 474 3488
Email: dcc@dcc.govt.nz
www.dunedin.govt.nz

24 July 2017

Hannah Bedford & Michael McSweeney
39 Oates Street
Kaikorai
Dunedin 9010

Dear Hannah Bedford & Michael McSweeney

RESOURCE CONSENT APPLICATION: **LUC-2016-645**
39 OATES SREET
DUNEDIN

Your application for retrospective land use consent to establish a covered verandah on top of a retaining wall in breach of the height plane angle and side yard was processed on a limited notified basis in accordance with 95A to 95G of the Resource Management Act 1991. The environmental effects were considered to be no more than minor, and no submission was received in respect of the application from the party considered to be affected. Pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager under delegated authority on 24 July 2017.

I advise that the Council has **granted** consent to the application. The decision is outlined below, and the consent certificate (including relevant conditions and advice notes) is attached to this letter.

BACKGROUND TO APPLICATION

The subject site is a residential property situated on the south eastern side of Oates Street, Dunedin. The site is an irregular shaped property with 6m of road frontage to Oates Street which provides the legal access to the property with a series of stairs located within the access leg. The application site is legally known as Lot 2 DP 4763 and contained within CFR OT279/68 and has an area of 631m2. The site was created by a two lot subdivision of Part Allotment 21 Township of Sunnyside on 4 July 1936. Council records indicate that the property was developed for residential activities prior to or in 1946, as this was when drainage plans were approved for the existing dwelling as shown on copies of site plans held by Council.

The title is subject to a Building Line Restriction (ref: 4381) which restricts any building or part of a building to be erected on the land fronting the south-eastern side of the portion of Oates Street within a distance of thirty-three feet (10.05m) from the centre line of the said portion of the street. As the proposal does not involve development within this portion of the property, the building line restriction is not considered relevant to this application.

Retrospective land use consent is sought as a result of the recent sale of the property which highlighted unconsented works, including the verandah which is subject to this application. The original application was lodged by the previous owner of the property, Dereck Parkes, on 20 December 2016. The subsequently change in property ownership resulted in the new owners, Hannah Bedford and Michael McSweeney taking over the processing of the application as of the 7 April 2017.

DESCRIPTION OF ACTIVITY

The application seeks retrospective consent for the establishment of a $20m^2$ verandah attached to a dwelling at 39 Oates Street, Dunedin. The verandah is covered and located above a retaining wall along the shared boundary between the dwelling and 43 Oates Street, Dunedin. The application is retrospective in nature with the verandah having been constructed in 2013, to replace a gabled entry to the dwelling.

The verandah is located between the dwelling and the north western property boundary shared with 43 Oates Street. The verandah has a length of 6.2m and extends to the north-west property boundary with the depth being 2.835m and located 0.015m from the bounadry. As a result of the location, the verandah breaches the height plane angle and the side yard along the boundary adjoining 43 Oates Street.

It is noted that the Council's aerial photography appears to show the structure being over the boundary and concerns of such were raised from the adjoining property owner. The applicant has since provided details from a Registered Professional Surveyor stating that they believe the aerial photography was distorted and have agreed that the calculated offset dimensions respectively to the north-west boundary are accurate. However, further survey fieldwork would be required to provide an accurate relationship of the verandah extension to the subject boundary.

REASONS FOR APPLICATION

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

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

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

<u>The Dunedin City District Plan.</u>

The site is zoned **Residential 1** in the Dunedin City District Plan. Oates Street is classified as a Local Road in the Plan's Roading Hierarchy.

The construction of the enclosed verandah does not comply with the following rules of the Residential 1 zone:

- Rule 8.7.2(i)(a) Minimum Yards - which requires all side yards to be a minimum of 2m in depth. The verandah is constructed to the boundary with the structure breaching the 2m side yard.

- Rule 8.7.2(ii) Height Plane Angle – which requires all structures to be located within a 63° height plane angle established at ground level on the boundary. Due to the difference in the height of the two properties and the location of the verandah on the boundary, the verandah breaches the height plane angle.

In accordance with Rule 8.7.4(i), the proposal is a **restricted discretionary** activity. The Council's discretion is restricted to the condition or conditions with which the activity fails to comply.

<u>The Proposed Plan</u>

The site is zoned **General Residential 2** in the proposed 2GP. It is located within an Infrastructure Constraint area. The property is not affected by any identified hazards.

Land Use Activity:

Rule 15.3.3.3 lists standard residential activity as being a permitted activity in the Residential zones subject to compliance with the performance standards. Rule 15.6.7.1 sets a height that new structures and additions are required to be in relation to the boundary. As the verandah is constructed within 0.015m of the boundary, this rule will not be complied with.

Rule 15.6.14 sets the required setbacks that new buildings and structures must be from a sites boundaries. Structures in the General Residential 2 zone are required to be a minimum of 2m from rear and side boundaries. The existing verandah will breach this requirement. Accordingly, the verandah will be a **Restricted Discretionary** activity pursuant to Rule 15.9.4.1 and 15.9.4.11.

These rules are not in effect.

Summary

The application was lodged on 20 December 2016, after the close of submissions on the Proposed Plan. The Residential zone rules are subject to submissions and could change as a result of the submission process. Accordingly, the Proposed Plan rules are not relevant to the activity status of the application, as determined at the time of lodgement. The Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this application.

The activity status of the proposal is therefore determined by the Dunedin City District Plan and the Proposed Plan, and is considered to be a **restricted discretionary** activity.

NES Soil Contamination Considerations:

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

It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

PLANNING ASSESSMENT

Affected Persons

The application submitted was accompanied by the written approval of the persons listed in the following table.

Person	Owner	Occupier	Address	Obtained
Robert F Smith & Penelope J Smith	*	*	48 Oates Street	28 December 2016
Gregory Proudfoot & Meaghan Bennett	*	*	47 Oates Street	21 December 2016
Joanna M Verberne	*	*	35 Oates Street	21 December 2016

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 effect of the activity on that person. Having regard to the location and limited scale of the verandah structure, it is not

considered any of the above parties are adversely affected as the encroachment is only in relation to the boundary with 43 Oates Street.

Notification

The application was limited notified to the owners and occupiers of the property at 43 Oates Street as a result of the breaches on the shared boundary and the potential for the verandah to create dominance and privacy effects. No submission was received following notification.

As the application is for an existing bulk and location breach with limited impact beyond the subject site, it is considered there are no planning issues which warrant a hearing in the absence of a submission. The Processing Planner spoke with the applicant following the closure of the submission period. The applicants confirmed that they did not wish a hearing to be held, unless required by Council. Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary, as is provided for by Section 100 of the Resource Management Act 1991.

Effects on the Environment

The following assessment of effects on the environment has been carried out in accordance with section 104(1) of the Resource Management Act 1991. It addresses those assessment matters listed in sections 6.7 and 18.6 of the District Plan, and Rule 16.9.5.5 of the Proposed Plan, considered relevant to the proposed activity, and is carried out on the basis that the environment is medium density residential development . The subject site has a southeast aspect and is located approximately 9m above the road level of Oates Street.

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

1. Bulk and Location (Assessment matter 8.13.3)

   The subject site is approximately 631m2 with an existing dwelling located in the central portion of the property. The bulk and location of the verandah attached to the dwelling will not be visually apparent from the road due to the location of the additions being screened by existing vegetation and located on a rear lot. The significant rise from the road level to the height of the dwelling and verandah also makes it unlikely that the additions would be visible from the road.

   The bulk and location of the structure will not cause any adverse effects on the wider environment surrounding the site. The effects are contained within the subject site and adjacent land, which the owners and occupiers have been deemed an affected party to the application.

2. Amenity Values and Character (Assessment matter 8.13.5)

   The proposal is for a residential activity in a residential zone and in this respect the effects of the activity on amenity values and the character of the area have largely been anticipated by the zoning of the site. The proposal will not detract from the amenity values of the zone, and will not adversely affect the character of the area. This is because the proposal is set back from the street frontage and the work is consistent with the receiving environment due to a sympathetic design and minor scale. The effects are contained within the subject site and adjacent land and have been deemed less than minor.

3. Design and Appearance (Assessment matter 8.13.6)

   The verandah was constructed as a result of a previously failing gabled roof entrance that was removed prior to the construction of the verandah. The gabled roof and verandah serve the purpose of protecting the sole access to the dwelling and the rear of the property, thus providing a benefit by providing a more functional layout than having no structures to protect the entrance from the weather.

The activity will not affect the general scale or character of the area and will not have an adverse effect on the neighbourhood. The design and appearance is typical of such structures in the locality and is associated with the existing residential activity which is envisioned in the area. Accordingly, it is considered that the design and appearance of the activity will not affect the general scale or character of the area and will not have an adverse effect on the neighbourhood.

4. Cumulative Effects (Assessment matter 8.13.13)

The effects of the existing activity in the area are presently not significant. The effects from this proposal are not expected to add to the existing effects such that the cumulative effects will be no more than minor. Future applications for activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time.

5. Consideration of Site Topography (Assessment matter 8.13.5)

The topography of the site makes it unpractical for the verandah to be located elsewhere. The dwelling has been long established with the entrance to the dwelling located where the verandah has been established. Due to the sloping nature of the site and the constraints that arises from it, this is the only established access to the dwelling and rear portion of the property.

CONSENT DECISION

That, pursuant to section 34A(1) and 108 and sections 104 and 104C of the Resource Management Act 1991, the Dunedin City Council ***grants*** *consent to a* ***restricted discretionary*** *activity being the retrospective establishment of a verandah in breach of the side yard and height plane angle on the site at 39 Oates Street, Dunedin, legally described a Lot 2 Deposited Plan 4763 (Computer Freehold Register OT279/68), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

REASONS

Effects

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and are outlined above. It is considered that the proposed activity will have no more than minor adverse effects on the environment.

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan were taken into account in assessing the application. The proposal has been assessed against the relevant provisions identified through Section 4 (Sustainability), Section 8 (Residential), and Section 21 (Environmental Issues).

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

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability Section)** seek to maintain and enhance the amenity values of Dunedin.

- **Objective 8.2.1 and Policy 8.3.1 (Residential Section)** seek to ensure the adverse effects on the amenity values and character of residential areas are avoided remedied or mitigated.

Proposed Plan

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

- **Objective 15.2.2 and Policy 15.2.2.1 (Residential Zones),** which seek to ensure that residential activities, development, and subdivision activities provide high quality on-site amenity for residents
- **Objective 15.2.3 and Policy 15.2.3.1 (Residential Zones),** which seek to ensure that activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.

The proposal is consistent with the relevant policy provisions above.

RIGHTS OF OBJECTION

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

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

Attn: Senior Planner- Enquiries Plaza, Ground Floor.

Yours faithfully

Alan Worthington
Resource Consents Manager

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Consent Type: Land Use Consent

Consent Number: LUC-2016-645

Location of Activity: 39 Oates Street, Dunedin.

Legal Description: Lot 2 DP 4763 (CFR OT279/68).

Lapse Date: There is no lapse date as the application is for retrospective approval for an existing structure.

Land Use LUC-2016-645

That, pursuant to section 34A(1) and 104B and after having regard to Part II matters and sections 104 and 104C of the Resource Management Act 1991, the Dunedin City Council ***grants*** *consent to a* ***restricted discretionary*** *activity being the retrospective consent for a verandah with bulk and location breaches, at 39 Oates Street, Dunedin, which is legally known as Lot 2 Deposited Plan 4763 and held in Computer Freehold Register OT279/68, subject to the conditions imposed as follows:*

1. *The proposal shall be given effect to generally in accordance with the plan and the accompanying information submitted as part of LUC-2016-645 received at Council on 20 December 2016.*

Advice Notes:

1. In addition to the conditions of a resource consent, the Resource Management Act establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake. A similar responsibility exists under the Health Act 1956.

2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.

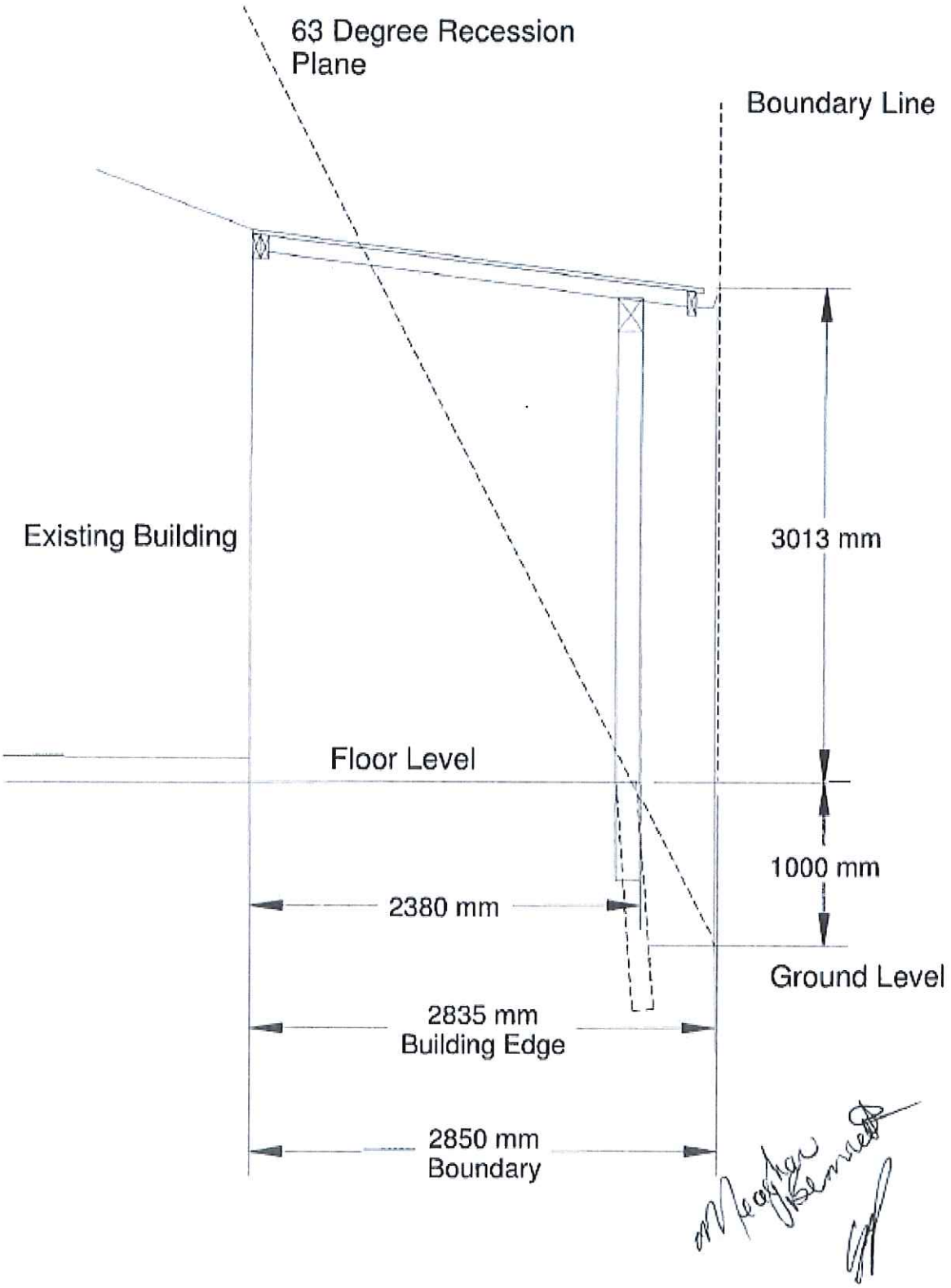
3. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.

3. It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.

Issued at Dunedin this 24 July 2017.

Alan Worthington
Resource Consents Manager

Appendix 1 – Copy of plan for LUC-2016-645
[Scanned image –Not to Scale]



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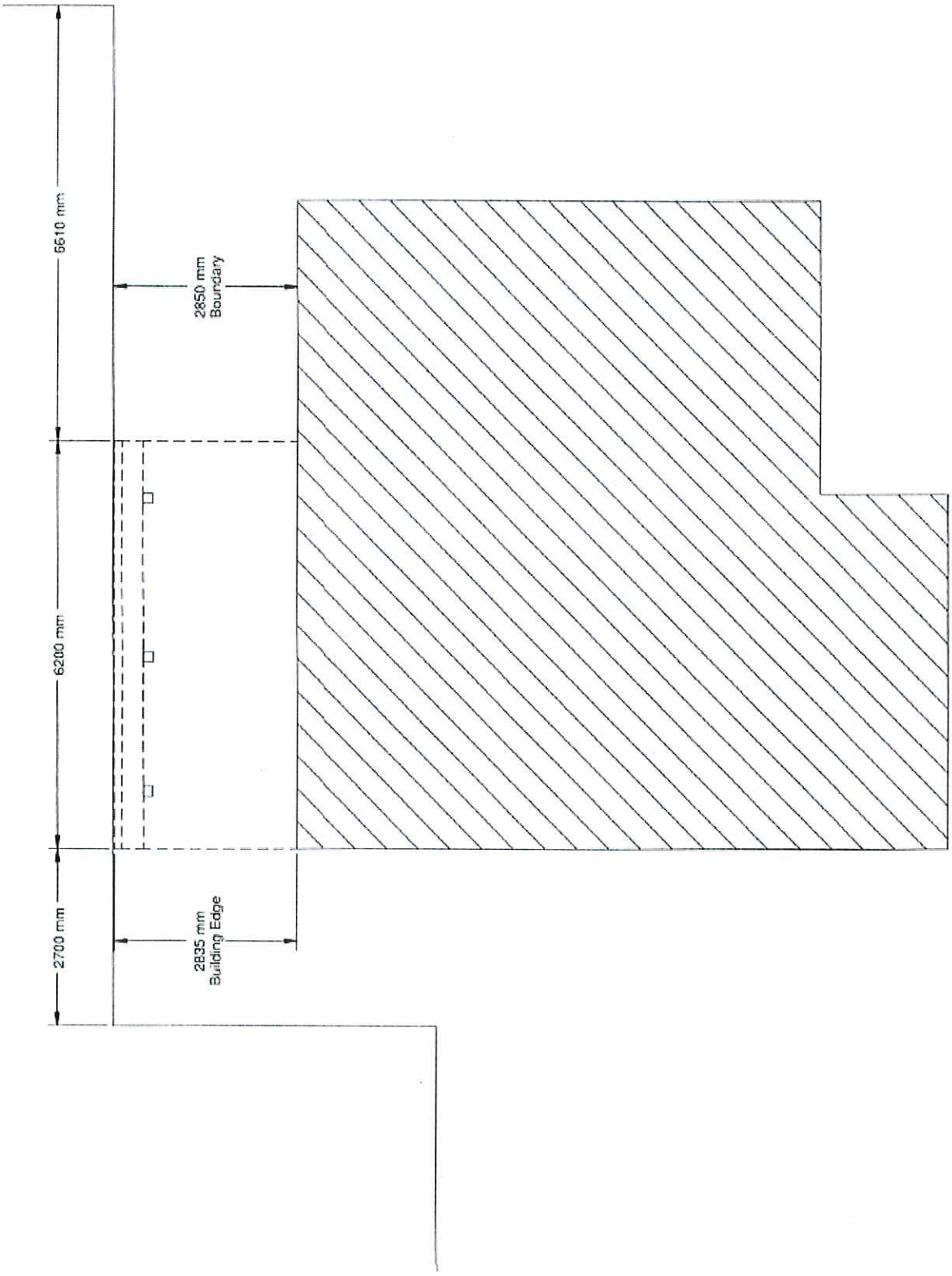

ENLARGED SITE PLAN