

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	DAVID PETER ILIAN
	(ENV-2019-CHC-116)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent
AND	DERRYN AND ROGER FEWTRELL
	Applicants

Environment Judge J E Borthwick – sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

Date of Consent Order:

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to:
 - (a) the amended conditions marked Annexure 1, attached to and forming part of this order;
 - (b) plans entitled:
 - (i) "Topographical Survey – Boundaries & Easements 103 Arthur Street, Dunedin" plan number 11610/S4A dated July 2016;
 - (ii) "Topographical Survey 103 Arthur Street, Dunedin" plan number 11610/S4 dated July 2016;



- (iii) "Proposed New Townhouse, 15 Russell St – Dunedin, New Basement Plan (incl.Site)" Sk02;
- (iv) "Proposed New Townhouse, 15 Russell St – Dunedin, New Ground Floor Plan (incl. site), Sk03" with handwritten annotation 'boundary fence' shown;
- (v) "Proposed New Townhouse, 15 Russell St – Dunedin, New First Floor Plan", Sk04;
- (vi) "Proposed New Townhouse, 15 Russell St – Dunedin, Exterior Elevations, Sk05";
- (vii) "Proposed New Townhouse, 15 Russell St – Dunedin, Exterior Elevations, Sk06" with handwritten annotation 'BUTTRESES' shown; and
- (viii) "Proposed New Townhouse, 15 Russell St – Dunedin, Perspectives, Sk07"
 - marked Appendix 1, attached to and forming part of this order;

(2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal by David Ilian against a decision of the Dunedin City Council to grant consent to D & R Fewtrell to construct a residential dwelling, including associated earthworks and retaining walls at 15 Russell Street, Dunedin.

[2] I have read and considered the consent memorandum of the parties dated 27 September 2019 which proposes to resolve the appeal and secondly, I have considered the respondent's memorandum of 15 October 2019. While the parties have not given the usual advice that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2, I am satisfied no issue arises.



Other relevant matters

[3] No person has given notice of an intention to become a party under s 274 of the Act.

Outcome

[4] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



J E Borthwick
Environment Judge



Annexure 1

Consent Type: Land Use Consent

Consent Number: LUC-2018-555

Purpose: To construct a residential dwelling, including associated earthworks and retaining walls.

Location of Activity: 15 Russell Street, Dunedin.

Legal Description: Lot 3, DP 16212 (Computer Freehold Register OT7B/881).

Lapse Date: ~~25 June~~ 30 September 2024, unless the consent has been given effect to before this date.

Conditions:

General

1. *The proposed activity must be undertaken in general accordance with the attached plans and elevations and with the information provided with the resource consent application, received by the Council on 2 October 2018, and further information received by Council on 29 October 2018, 8 February 2019, 15 April 2019 and 30 April 2019, except where modified by the following conditions of consent.*
2. *The consent holder must:*
 - a) *be responsible for all contracted operations relating to the exercise of this consent; and*
 - b) *ensure that all personnel (contractors) working on the site are made aware of the conditions of this consent, have access to the contents of consent documents and to all associated erosion and sediment control plans and methodology; and*
 - c) *ensure compliance with land use consent conditions.*

Pre-Commencement

3. *Subject to agreement of the owners of 19 Russell Street, the applicant shall arrange for a pre-commencement survey of the existing condition of the dwelling at 19*



Russell Street for the purpose of providing a record against which potential damage arising from the works might be assessed.

4. Prior to undertaking the work, a suitably qualified and certified Engineer shall certify that the detailed design and construction methods of the earthworks and retaining (including temporary shoring) are appropriate to avoid instability on adjacent properties as a result of the works.
5. The consent holder must provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.
6. Earthworks may not commence until a building consent has been issued.
7. The consent holder must establish a construction phase vehicle access point to the site and ensure it is used by construction vehicles. The access is to be stabilised by using a geotextile fabric and either topped with crushed rock or aggregate. The access is to be designed to prevent runoff.
8. The Consent holders must construct the boundary fence at their cost between the site and 19 Russell Street, prior to constructing the dwelling. The location of the boundary fence is shown on the boundary on plan SK03.
9. The three buttresses shown on the North Elevation (SK06) are to be modified and constructed as follows:
 - a) The buttresses are to be set back 1 metre from the boundary with 19 Russell Street, and are to be constructed vertically, and not with a slope; and
 - b) The top of the buttresses are not to exceed the height of the sills of the two North facing top lights in the kitchen and snug (shown on the North Elevation SK06 and labelled high level window on SK04).

Erosion, Sediment & Dust

7.10. To ensure effective management of erosion and sedimentation on the site during earthworks and as the site is developed, measures are to be taken and devices are to be installed, where necessary, to:

- a) divert clean runoff away from disturbed ground;
- b) control and contain stormwater run-off;
- c) avoid sediment laden run-off from the site; and
- d) protect existing drainage infrastructure, sumps, drains and watercourses from sediment run-off.

8.11. At the end of each main earthwork stage (or earlier, if conditions allow) the affected areas must be immediately adequately top-soiled and vegetated (e.g. hydro-seeded) or covered with clean gravel to limit sediment mobilisation.



~~9-12.~~ Should the consent holder cease, abandon, or stop work on site for a period longer than 6 weeks, the consent holder must first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions and must thereafter maintain these measures for so long as necessary to prevent sediment discharge or dust emission from the site. All such measures must be of a type and to a standard which are to the satisfaction of the Resource Consent Manager.

~~10-13.~~ Surplus excavation and unsuitable material are to be disposed of away from the site to a Council approved destination.

~~11-14.~~ Temporary drainage connections from the dwelling to an approved stormwater outlet are to be installed should the roof of the new dwelling be established prior to the commissioning of stormwater drainage for the new dwelling.

~~15.~~ No soil disturbance or soil shifting, unloading, loading will take place if wind speed is higher than 14 metres per second if the soil is dry and prone to becoming airborne, unless a dust suppressant is applied.

Engineering & Stability

~~12-16.~~ Any earthworks shall be designed, specified and supervised by an appropriately qualified and certified Engineer.

~~13-17.~~ Any retaining wall over 1.5m in height, or which supports surcharge, shall be specifically designed and its construction supervised by an appropriately qualified and certified Engineer.

~~14-18.~~ Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.

~~15-19.~~ Any fill material to be introduced to the site must comprise clean fill only.

~~16-20.~~ Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.

~~17-21.~~ Any areas of certified or uncertified fill must be identified on a plan, and the plan and certificates submitted to Council to be recorded against the property file.

~~18-22.~~ The consent holder's Engineer must be engaged to determine any temporary shoring requirements at the site during earthworks construction and the consent holder must install any temporary shoring recommended by the Engineer.

~~19-23.~~ Slopes must not be cut steeper than 1h:1v (45°) without specific engineering design and construction.

~~20-24.~~ Slopes must not be filled steeper than 2h:1v (27°) without specific engineering design and construction.

~~21-25.~~ The excavation slopes shall be supported within 1 month of commencing the earthworks.

Surface Water & Drainage



22-26. Any change in ground levels is not to cause a ponding or drainage nuisance to neighbouring properties.

Noise

23-27. Earthworks and construction activity shall be limited to the times set out below and shall be designed and conducted to comply with the following noise limits as per New Zealand Standard NZS 6803:1999 Acoustics – Construction noise:

Time of Week	Time Period	Leq (dBA)	Lmax(dBA)
Weekdays	0630-0730	60	75
	0730-1800	75	90
	1800-2000	70	85
	2000-0630	45	75
Saturdays	0630-0730	45	75
	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0630-0730	45	75
	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

Sound levels must be measured and assessed in accordance with the provisions of NZS 6803:1999 Acoustics – Construction noise.

Transportation

24-28. The consent holder shall take all reasonable measures to prevent the deposition of debris on any public road or private accessway. Should debris still be deposited on any public road or private accessway, the consent holder shall ensure that it is cleaned as soon as possible.

25-29. If at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures; or any private accessway or property, have been affected/damaged by contractor(s), consent holder, developer, person involved with earthworks or building works, and/or vehicles and machineries used in relation to earthworks and construction works, they must be reinstated to the satisfaction of Council at the expense of the consent holder.

26-30. All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site.

Accidental Discovery



27.31. If the consent holder:

- a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:
 - i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.
 - ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Any koiwi tangata discovered must be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work may recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:
 - i) stop work within the immediate vicinity of the discovery or disturbance; and
 - ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and
 - iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work must recommence following consultation with the Consent Authority.

Landscape Plan

28.32. Planting capable of reaching at least two-thirds the height of the dwelling is to be established within the yard adjoining 19 Russell Street for the purpose of softening the northern façade of the dwelling. A landscape plan depicting such planting shall be submitted to rcmonitoring@dcc.govt.nz no later than one month prior to construction for certification by Council's Urban Design Department that the planting will achieve this purpose. Planting in accordance with the landscape plan is to be carried out no later than the first planting season following construction of the dwelling. The planting is to be maintained, including replacement of plants where necessary, to ensure the purpose of the planting continues to be achieved.

Surveyor

29.33. The applicant shall engage a licensed cadastral Surveyor to accurately identify the location of the northern boundary (with 19 Russell Street), and set



out the location of foundations for the proposed building. The entire building including roof eaves and guttering (and associated drainage) must be contained within the property boundaries.

Advice Notes:

1. Neighbouring property owners should be advised of the proposed works at least seven days prior to the works commencing.
2. Council recommends that appropriate third party liability insurances are in place which identify nearby structures prior to undertaking any excavation that might affect others' land.
3. The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off:
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).
4. It is recommended that a pre-commencement survey of the current condition of the private accessway be undertaken.
5. It is recommended that a formal agreement be drawn up between the owners/users of all private accesses in order to clarify their maintenance responsibilities.
6. Rights of way over the subject site in favour of other properties must remain free of obstructions at all times.

Heritage

7. Buildings built before 1900 or sites which were in use before that time are considered archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014. Before disturbing an archaeological site, or to check whether a site is an archaeological site, the consent holder is advised to discuss their proposal with Heritage New Zealand.

General

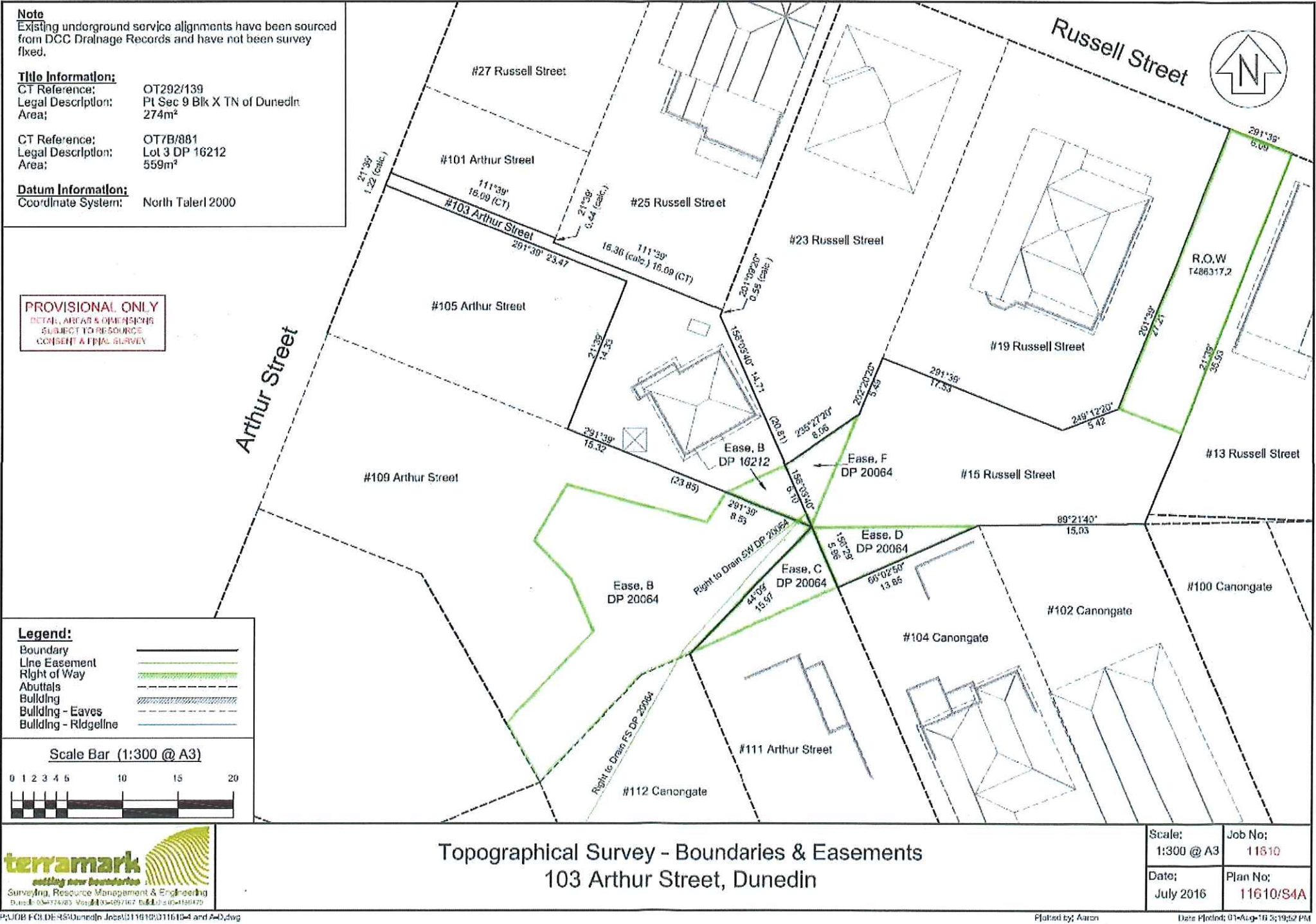
8. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
9. Resource consents are not 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.
10. The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
11. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the 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.

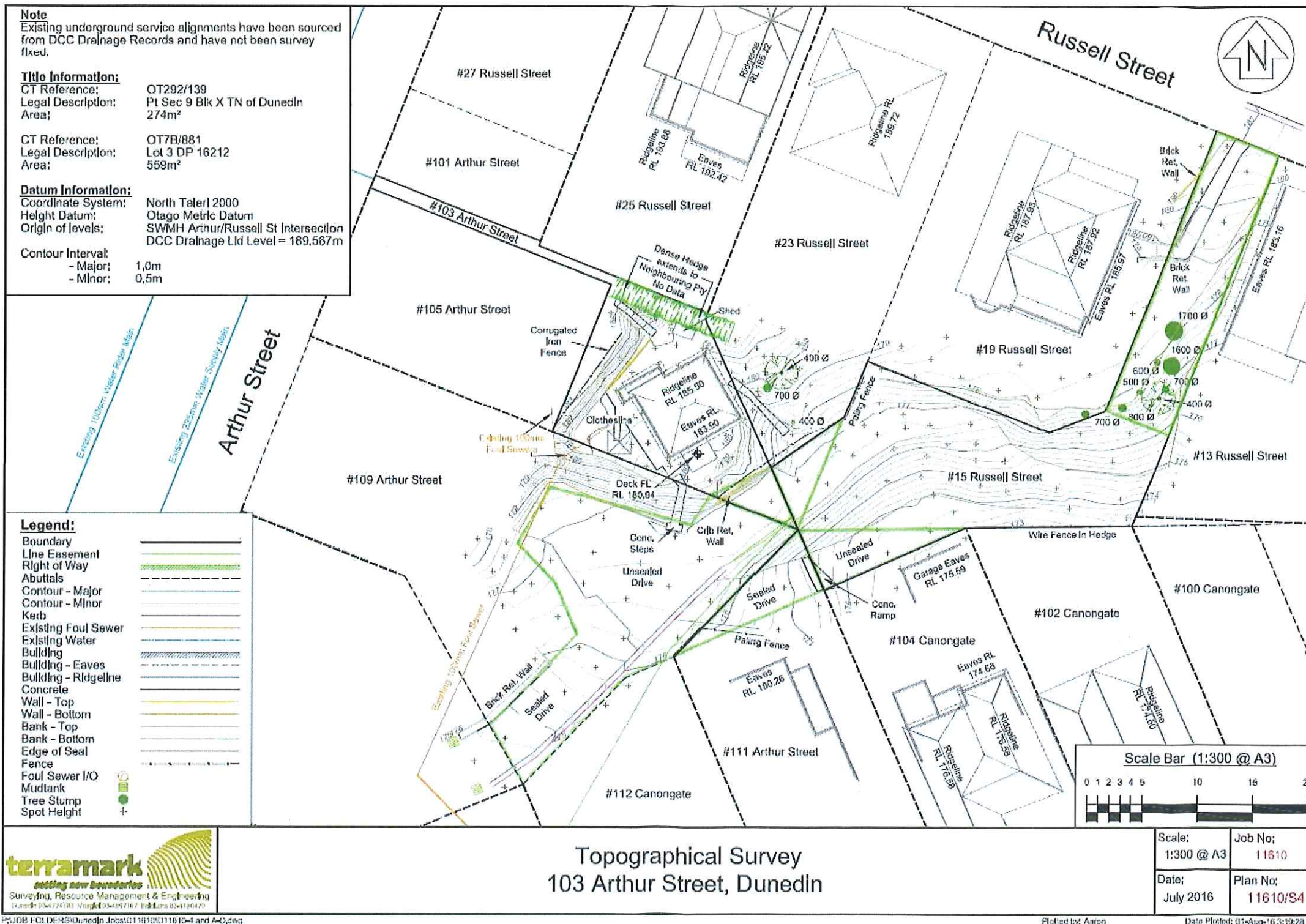


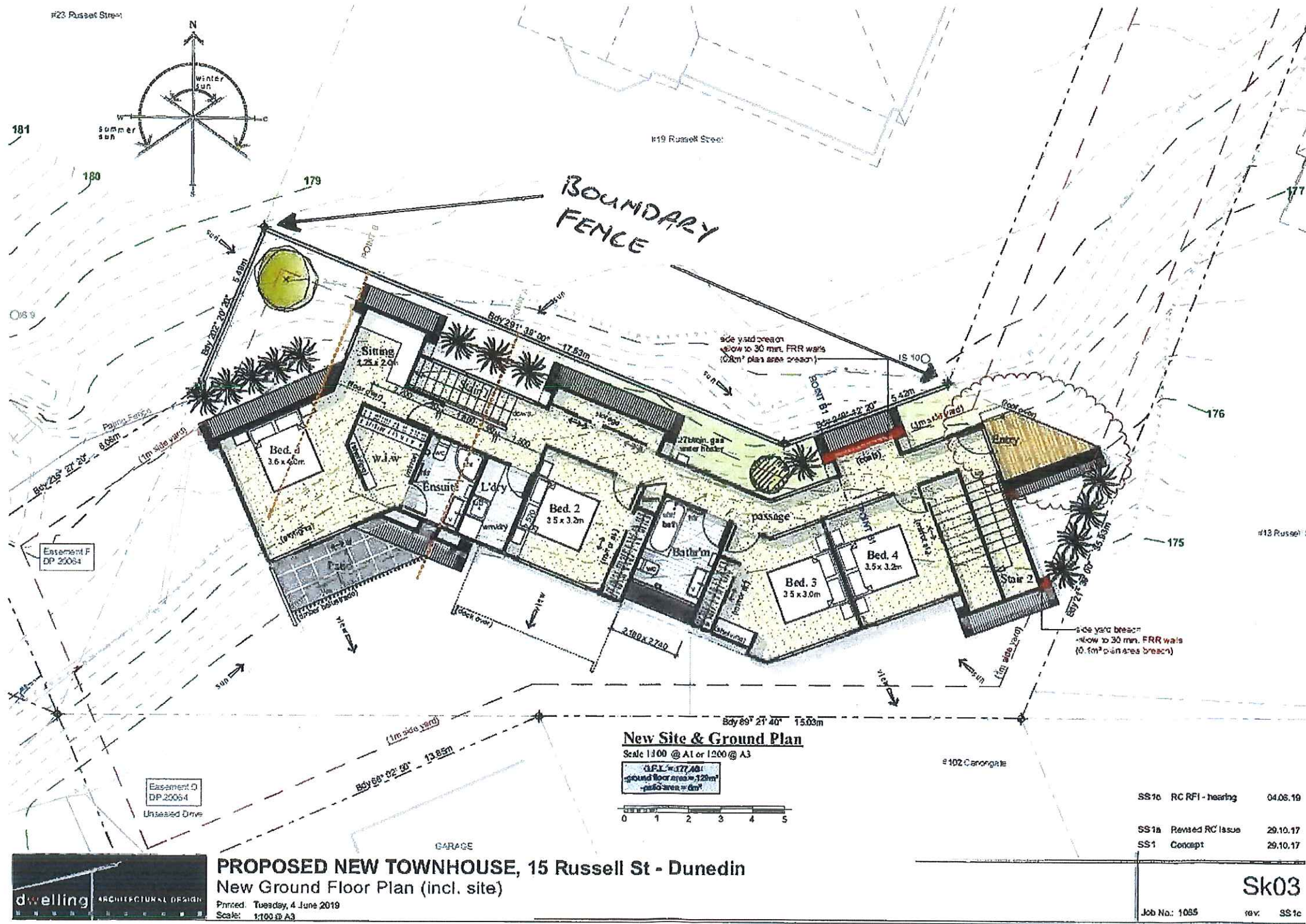
12. This is a resource consent. Please contact the Council's Building Control Office, Development Services, about the building consent requirements for the work.

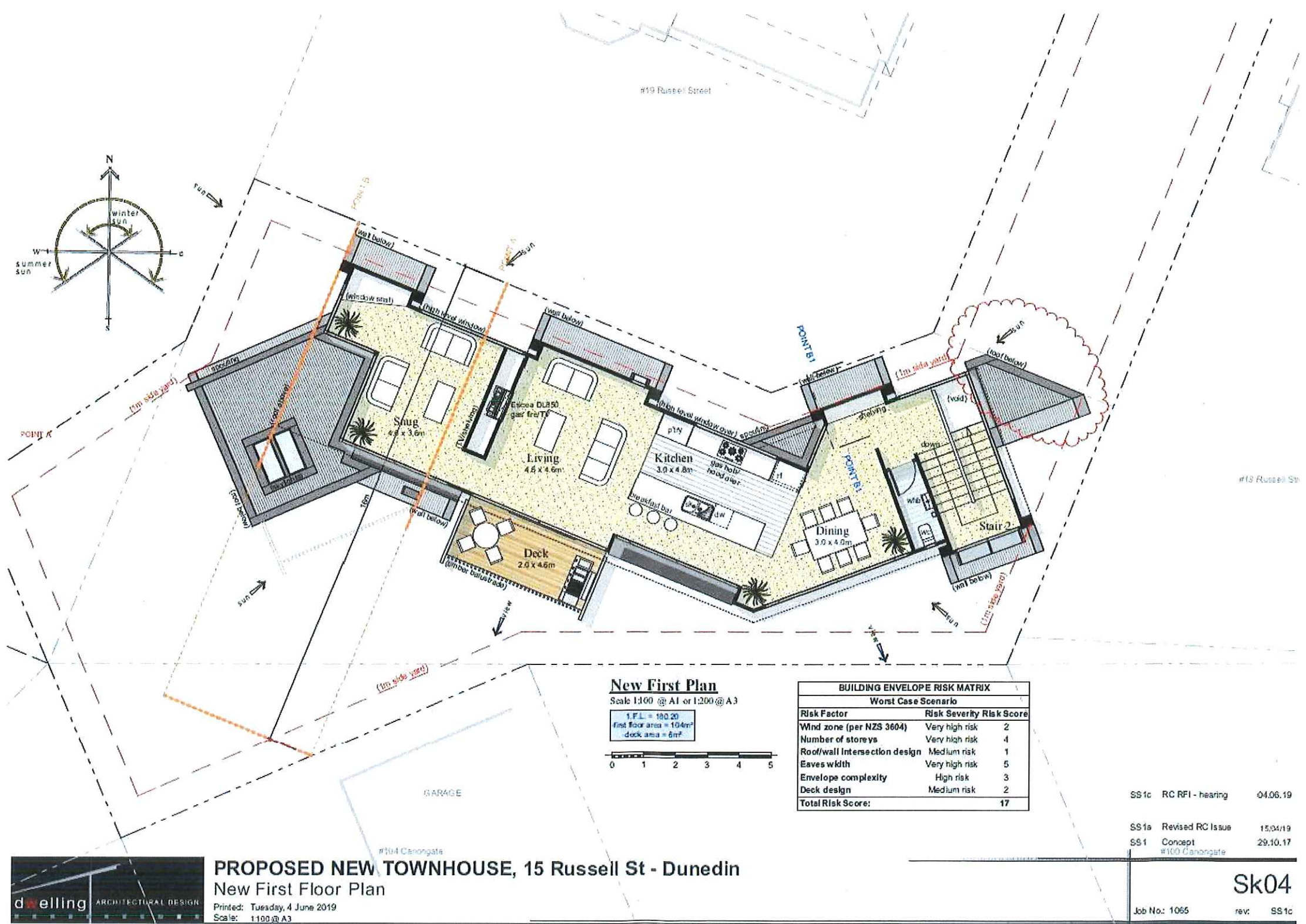


APPENDIX 1 – APPROVED PLANS FOR LUC-2018-555 (Scanned Images/Not to Scale)







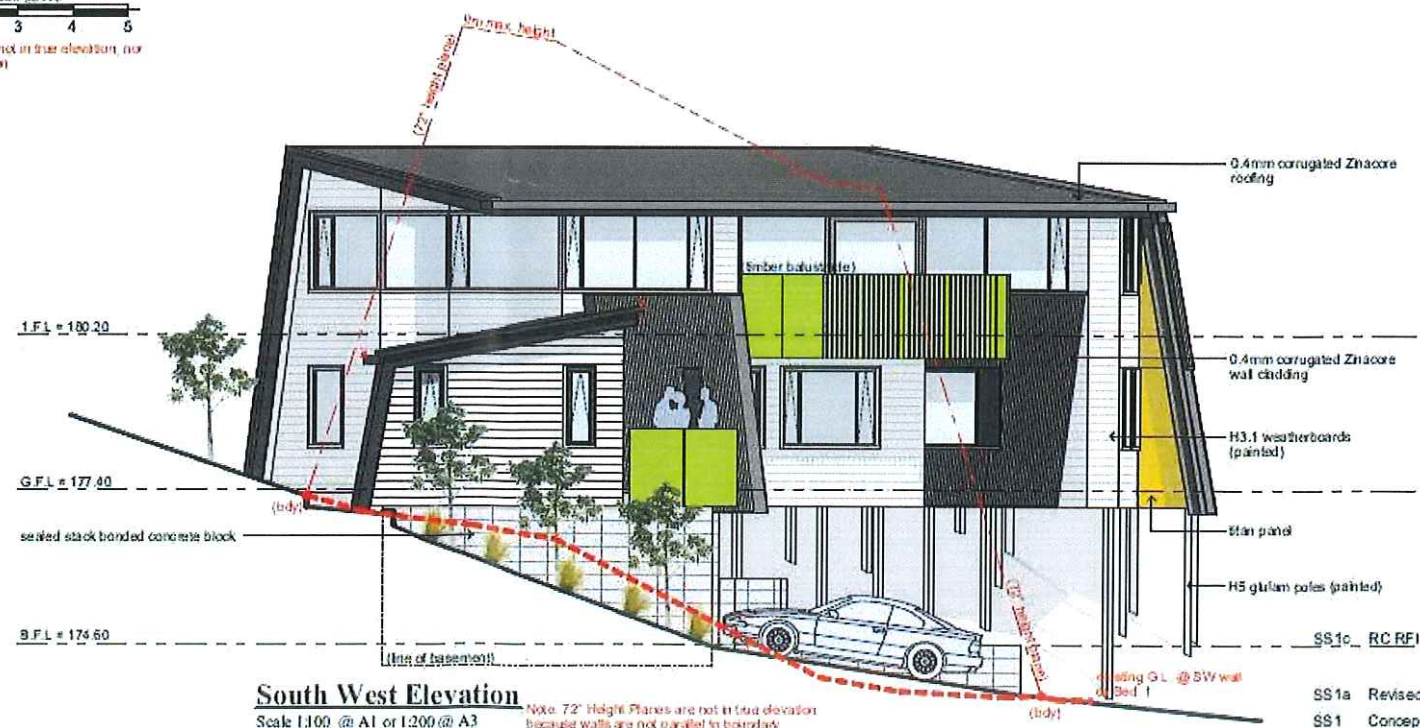




South Elevation

Scale 1:100 @ A1 or 1:200 @ A3

Note: 72" Height Plane is not in true elevation, nor is the whole south elevation



South West Elevation

Scale 1:100 @ A1 or 1:200 @ A3

Note: 72" Height Plane is not in true elevation because walls are not parallel to boundary

SS1c RC RFI - hearing 04.06.19

SS1a Revised RC Issue 29.10.17

SS1 Concept 29.10.17



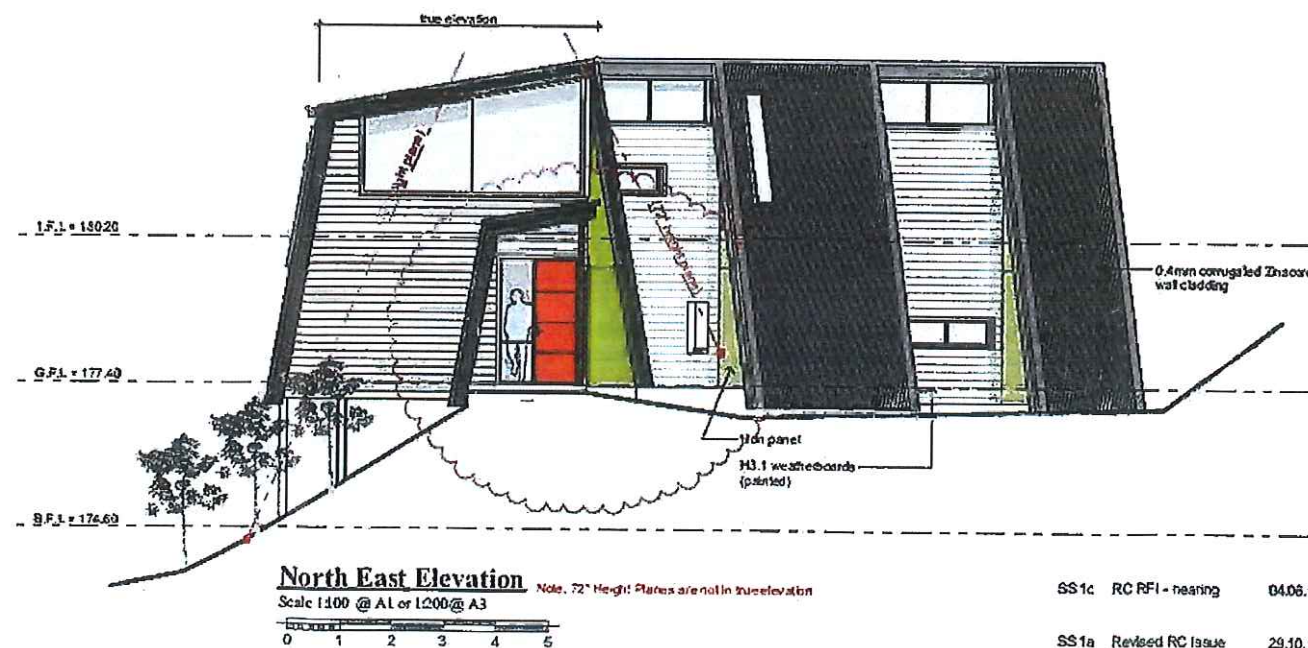
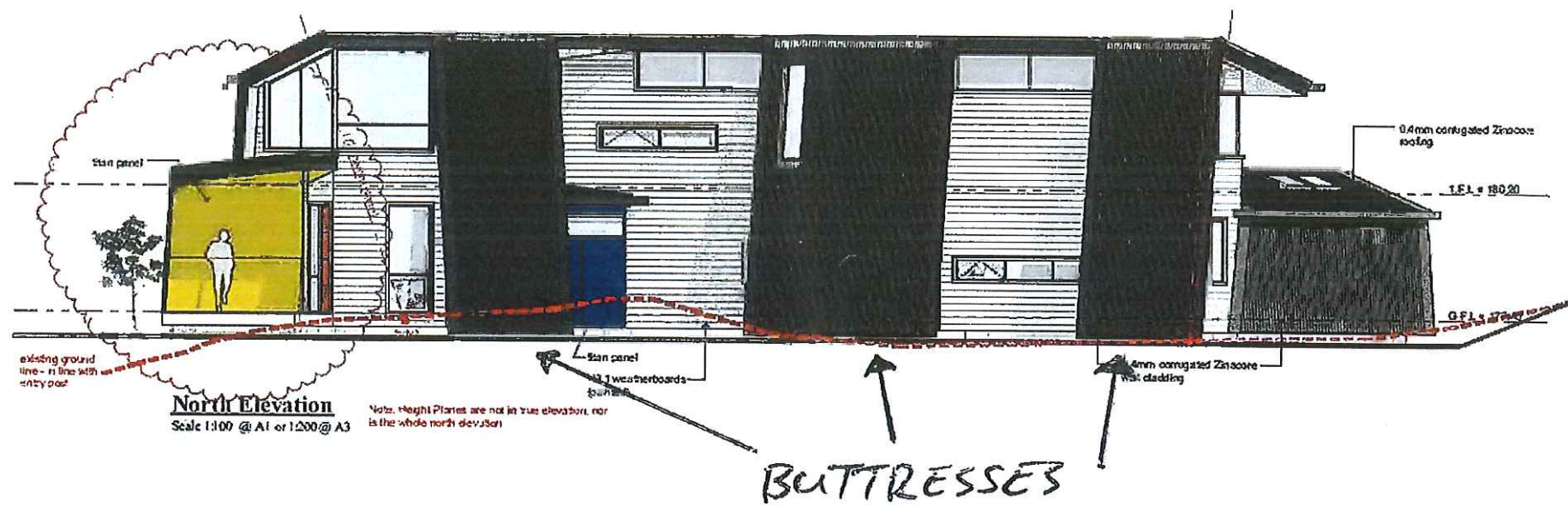
PROPOSED NEW TOWNHOUSE, 15 Russell St - Dunedin
Exterior Elevations

Printed: Tuesday, 4 June 2019
Scale: 1:100 @ A3

Sk05

Job No.: 1065 rev: SS1c

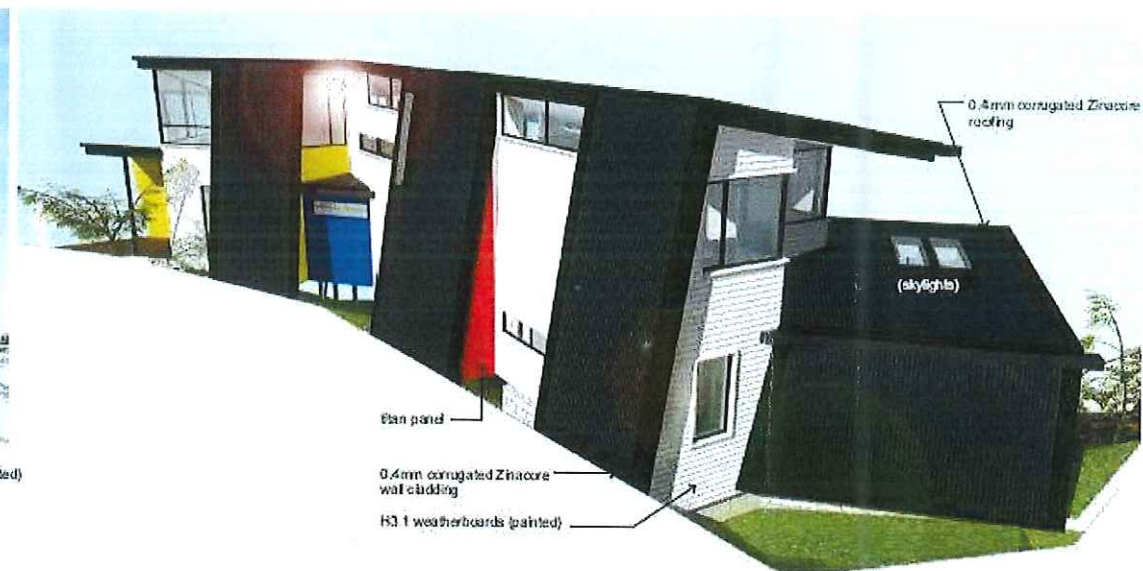




PROPOSED NEW TOWNHOUSE, 15 Russell St - Dunedin
Exterior Elevations
Printed: Tuesday, 4 June 2019
Scale: 1:100 @ A3

SS1c	RC RFI - hearing	04.08.19
SS1a	Revised RC Issue	29.10.17
SS1	Concept	29.10.17
Sk06		
Job No.: 1085	rev:	SS1c





SS1c RC RFI - hearing 04.06.19

SS1a Revised RC Issue 29.10.17

SS1 Concept 29.10.17



PROPOSED NEW TOWNHOUSE, 15 Russell St - Dunedin Perspectives

Printed: Tuesday, 4 June 2019
Scale: 1:100 @ A3

Sk07	
Job No.: 1065	rev: SS1c

