

Report

TO: Consent Hearings Committee

FROM: Lianne Darby, Planner

DATE: 15 December 2017

SUBJECT: **RESOURCE CONSENT APPLICATION:
LAND USE LUC-2017-418
401, 402 & 403 HIGH STREET
DUNEDIN**

1. INTRODUCTION

- [1] This report has been prepared on the basis of information available on 15 December 2017. 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.

2. BACKGROUND TO APPLICATION

- [2] The Downie Stuart Foundation is a charitable trust established to provide support for adult male offenders. The Moana House programme has operated from the High Street location since 1987 and provides long-term residential facilities, as well as continuing care (counselling/therapy) and an outpatients' after-care programme with training and workshops. The service also provides community training programmes, such as the Impaired Drivers Programme, and training for health professionals. The Impaired Drivers Programme runs two or three courses a years for twelve people meeting once a week over eight weeks. The training for health professionals consists of day-long workshops, and occurs as needed but not more than once a month.
- [3] Moana House operates from three existing sites. 401 and 403 High Street are situated on the southern side of the road, while 402 High Street is across the road. All three properties have well established houses used for a variety of activities. The subject sites and their present occupation and use are:
- 401 High Street (Lot 2 DP 4266; CFR OT14C/712) is used as a residential facility containing seven programme beds and one staff bed. It also has the administration facilities and counselling personnel's office. There is another bedroom and toilet in an accessory building on-site. There is a garage at the road side utilised for carving (wood and stone), and a number of sheds along the boundary with 403 High Street.
 - 402 High Street (Lot 4 DP 2281, Part Sec 42 Block II Town of Dunedin, Part Lot 3 DP 2281 and Part Lot 5 DP 1266; CFR OT368/120). RMA 2003-1193 (RMA-2003-357375) approved residential activity in the flat upstairs (three beds) and training and workshops from the downstairs flat. The training facilities are used by other community groups and social services and for community probation service clients. No on-site parking is provided. The consent restricted workshops to three a week, for up to 15 people.

- 403 High Street (Lot 1 DP 4266; CFR OT276/233) is used as a residential facility containing four programme beds and one staff bed. There are the remains of a historic building at the rear. There is a bluestone wall located along the boundary with 409 High Street.

- [4] The Foundation has two vans and a truck and trailer which are used for pick up and drop off for the impaired driving participants. The truck and trailer usually parks in the driveway of 403 High Street. Council's aerial photograph from 2013 has them parked on the street outside 401 High Street. All Moana House programme participants are provided with a Go Bus Pas to facilitate bus use.
- [5] Moana House currently has two administration staff, and twenty-two programme delivery specialists whom work on a rotational basis in cover the 24-hours, seven-days-a-week, programme.

3. DESCRIPTION OF ACTIVITY

403 High Street:

- [6] The applicant intends to construct a new three-storey building at the rear of the existing house on 403 High Street. The building will be accessed via the existing driveway, and will have parking on the ground floor. The first floor will be used for the administration of Moana House, staff room and toilets, and a large multi-purpose room. The sloping ground will give this level direct access to the courtyard of 401 High Street. The upper floor will contain four counselling rooms and a sitting area. The building will serve as a venue for all training and workshops to residents and non-residents. The building will not contain a kitchen or living space.
- [7] Activities to occur within this building will include the Impaired Drivers Course two or three times a year for twelve people meeting once a week for eight weeks. There will also be day-long workshops for health professionals every two to four weeks. The large multi-purpose room will be available for other service groups as required, if free. This might be two or three times a week, at most.
- [8] The ground floor will provide parking for three vehicles, and will have two secure storage rooms. The larger store will house tools used in training and workshops, and will allow the off-site rental storage to be relinquished. The smaller store will house clothing and provide a designated dressing room area where participants who arrive with minimal clothing are fitted out. This facility is currently accommodated in a staff bedroom due to the lack of available space in Moana House.
- [9] The building construction will involve earthworks. The total volume of cut will be 210m³, and the amount of fill, 2m³. The maximum depth of cut will be 3.3m, and will occur at the rear of the new building near the boundary with 401 High Street.

402 High Street:

- [10] With the construction of the new building on 403 High Street, the community support services within the existing dwelling on 402 High Street will be relocated to the new facility. The upstairs flat at 402 High Street will continue to operate in its present form. The downstairs area (previously used for the community support activities) will become a second flat of three to four bedrooms.

401 High Street:

- [11] The residential facilities for seven residents and a staff member will continue within the existing dwelling, as will the extra bedroom in the external accessory building. The external meeting room in the southeast corner of the site will remain a public space for smaller gatherings as needed. The lean-tos along the western boundary will be removed, and eventually, the rear courtyard will be developed so as to improve the linkages between the buildings of 401 and 403 High Street, as well as improve laundry

drying facilities. The garage will continue to be used to teach carving and to store the related tools.

- [12] The property will still be used for some community support activities from the public rooms when needed, along with some of the minor administration aspects of the operation.
- [13] The application includes an assessment of effects on the environment and, in relation to 403 High Street, solar studies of shading anticipated from the new building, a geotechnical report, and a report on contaminated soils. A copy of the application is attached to this report in Appendix A.

4. ACTIVITY STATUS

- [14] 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.
- [15] 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.
- [16] The relevant rules of the two district plans for this application are as follows:

The Dunedin City District Plan.

- [17] The subject sites are zoned **Residential 1**, and all three are within the precinct **TH14 – High Street Heritage Precinct**. The house of 402 High Street is a listed structure **B324**. They are shown on the Hazards Register as **11407 – Seismic (liquefaction)**. High Street is a **District Road** in the District Plan roading hierarchy.

Residential Activity:

- [18] Rule 8.7.1(i) lists residential activity at a density of not less than 500m² of site area per residential unit as being a permitted activity, subject to the performance criteria.
- [19] **401 High Street** is currently used for residential activity, and this will not change in anyway. The existing residential activity of 401 High Street fails to comply with the following:
- Rule 8.7.2(i) specifies front yards of 4.5m and side and rear yards of 2.0m. The house and garage were built in 1933, and any bulk and location breaches exhibited by the existing house and garage were lawfully established at that time, or at the time of subsequent alterations. Likewise, Council records show the rear accessory buildings (whanau room and sleepout) to be in place by 1964 although their use appears to have changed since their construction. There are no records at Council regarding the accessory buildings on the boundary with 403 High Street. Any bulk and location breaches exhibited by the existing dwelling or accessory buildings, excepting those on the boundary with 403 High Street, will have existing use rights.
 - Rule 8.7.2(viii)(a) requires residential activity to have two car parks per residential unit with more than 150m² gross floor area. The residential activity of

401 High Street should have at least two parking spaces. Further, where car parking is provided, on-site manoeuvring is required for a site fronting a District Road. There is one garage at the street frontage which is not used for parking. Accordingly, the existing residential activity at the site has no on-site parking provision.

- [20] The residential activity of 401 High Street is therefore a **restricted discretionary** activity pursuant to Rule 8.7.4(i).
- [21] **402 High Street** has an existing dwelling which drainage records at Council show as being established by 1925. The upper floor is used as a residential unit, and the proposal will establish a second residential unit on the ground floor. The site has an area of 509m², making the second residential unit a breach of density. The residential activity of 402 High Street is considered to be a **non-complying** activity pursuant to Rule 8.7.6(iii).
- [22] Although not strictly applicable to non-complying activities, the performance criteria of Rule 8.7.2 provide guidance as to acceptable use of the site. The residential activity of 402 High Street will fail to comply with the following:
- Rule 8.7.2(i) specifies front yards of 4.5m and side and rear yards of 2.0m. The house was built by 1925, and any bulk and location breaches exhibited by the existing house were lawfully established at that time, or at the time of subsequent alterations. Any bulk and location breaches exhibited by the existing dwelling are considered to have existing use rights.
 - Rule 8.7.2(viii)(a) requires residential activity to have one car park per residential unit up to 150m² in gross floor area, and two parking spaces with more than 150m² gross floor area. The existing and proposed residential activity of 402 High Street should have at least two parking spaces, possibly more. There are no on-site parking spaces provided.
- [23] **403 High Street** has an existing residential unit and sleepout. The residential activity of this site is considered to be a permitted activity pursuant to Rule 8.7.1(i), but is expected to fail to comply with the following:
- Rule 8.7.2(viii)(a) requires residential activity to have two parking spaces for a dwelling with more than 150m² gross floor area. The present on-site parking provision will change with the proposal, and it is expected that all on-site parking provided will be associated with the proposed community support activity and not the residential activity.

- [24] The existing residential activity of 403 High Street will become a **restricted discretionary** activity pursuant to Rule 8.7.4(i).

Community Support Activity:

- [25] Rule 8.7.5(i) lists community support activity as being a discretionary (unrestricted) activity. A community support activity means the use of land and buildings for the primary purpose of supporting the health, welfare, safety, education, culture and spiritual well-being of the community.
- [26] The community support activity of **401 High Street** was established in 1987 or earlier, although there is no formal notification or consent at Council of this occurring. The Scheme Plan of the day does not appear to provide for supported living facilities or community support-type activities, and it is not clear if the existing community support activity was lawfully established. Any such activity occurring on-site has, however, been established for approximately 40 years. On the basis that the lawfulness of the existing activity is unknown, the existing community support activity

of 401 High Street is considered to be an **unrestricted discretionary** activity pursuant to Rule 8.7.5(i).

- [26] The community support activity currently accommodated in the dwelling of **402 High Street** was consented by RMA 2003-1193 (now renumbered RMA-2003-367375) in 2004. The consent also authorised no on-site parking provision for the training facility. The proposal means there will be no community support activity operating from this site.
- [27] The proposal will introduce a new building onto **403 High Street** to be used for community support activities. The community support activity is considered to be an **unrestricted discretionary** activity pursuant to Rule 8.7.5(i)
- [28] Although not strictly applicable to unrestricted discretionary activities, the performance criteria of Rule 8.7.2 provide guidance as to acceptable use of the site. The community support activity of 403 High Street will fail to comply with the following:
- Rule 8.7.2(i) specifies side and rear yards of 2.0m. The new building will be situated 1.5m from the boundary shared with 401 High Street at the first floor, with the porch and wing walls abutting the boundary, therefore breaching the yard space by up to 2.0m.
 - Rule 8.7.2(ii) specifies a height plane angle of 63° measured from existing ground level at the boundary. The new building will breach the height plane angle by approximately 10° in respect of the boundary with 401 High Street.
 - Rule 8.7.2(iv) specifies a maximum site coverage of 40%. The house and new building combined will have a site coverage of approximately 50%, therefore breaching site coverage by 10%.
 - Rule 8.7.2(vi) requires residential units not sharing a wall to have a separation distance of 4.0m. The existing house and new community support activity building will be approximately 2.5m apart.

Heritage Precinct:

- [29] Rule 13.7.2 lists the erection of any new building within a heritage precinct as being a **controlled** activity. Council's control extends to the external design and appearance of the building, including building material and external colour.

Earthworks:

- [30] Rule 17.7.2(ii) lists earthworks as being a permitted activity, subject to compliance with Rules 17.7.3(i) to 17.7.3(vi). The proposal will fail to comply with the following:
- Rule 17.7.3(ii) sets the scale thresholds for permitted earthworks, shown in Table 17.5. The scale thresholds for sites smaller than 2.0ha in the Residential 1 zone allow a maximum change in ground level of 1.5m, and a maximum volume of 100m³. The proposed earthworks will have a volume of approximately 210m³ and a change in height of approximately 3.3m.
 - Rule 17.7.4(iii) sets the scale thresholds for controlled earthworks, shown in Table 17.6. These include a maximum change of ground level of 2.0m, and a volume of 250m², in the Residential 1 zone. The proposed earthworks will breach the change in height threshold.
- [31] Rule 17.7.5(ii) notes that earthworks which do not comply with Rule 17.7.3(ii) or Rule 17.7.4(iii) scale thresholds are considered to be **restricted discretionary** activities. Council's discretion is restricted to:
- a) Adverse effect on the amenity of the neighbouring properties

- b) Effects on visual amenity and landscape.
- c) Effects on any archaeological site and/or any cultural site.
- d) Effects on the transportation network, caused by the transport of excavated material or fill.
- e) Effects from the release of sediment beyond site boundaries, including transport of sediment by stormwater systems
- f) Cumulative effects relating to any of these matters.
- g) Design and engineering of retaining structures and earthworks.
- h) Effects on the stability of land and buildings.
- i) Effect on the surface flow of water and on flood risk
- j) Effects on underground utilities.

Summary:

[32] Overall, the land use proposal is considered to be a **non-complying** activity.

The Proposed Plan

[33] Under the Proposed Plan, the sites are zoned **Inner City Residential** and are within the **High Street Heritage Precinct**. 402 High Street has a listed building, **B324**, and 401 and 403 High Street have character contributing buildings **CC493** and **494**. There is an **Archaeological Alert Layer**. High Street is an **Urban High Density Corridor**.

Land Use Activity:

[34] Under the rules of the Proposed Plan, activities have both a land use activity and a development activity component.

Land Use Activity:

[35] Rule 15.3.3.3 lists residential activity as a permitted activity in the residential zones subject to the performance criteria. The residential activity of all three sites will not have sufficient on-site parking to meet the requirements of Rule 15.5.9. The residential activity of all three sites is therefore considered to be a restricted discretionary activity pursuant to Rule 15.3.2.13.

[36] Rule 15.3.3.5 lists community and leisure – small scale as being a permitted activity for the residential zones, and Rule 15.3.3.18 lists training and education as being a restricted discretionary activity for the residential zones. There is insufficient on-site parking to meet Rule 15.5.9. Accordingly, the Foundation's support activities are considered to be a restricted discretionary pursuant to Rule 15.3.2.14.

Development Activity:

[37] Rule 15.3.4.7 lists new buildings in a residential heritage precinct as being a restricted discretionary activity.

[38] Rule 15.6.2.1(a) specifies the scale thresholds for development earthworks. Maximum change in ground level for the residential zones is set at 1.5m, and the maximum volume is set at 30m² per 100m² of site area. The proposed earthworks will exceed both maximum volume and change in height, and will be classified as earthworks – large scale which are a restricted discretionary activity pursuant to Rule 15.3.4.30.

Overall Proposed Plan Status:

[39] Having regard to both the land use and development activity components under the Proposed Plan, the land use proposal is considered to be a restricted discretionary activity.

Summary

[40] The application was lodged on 22 August 2017, 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 land use activity status of the application as determined at the time of lodgement.

- [41] The activity status of the residential and community support activities, including earthworks and the construction of a building in a heritage precinct, on the three subject sites is determined by the Dunedin City District Plan, and is considered to be a **non-complying** activity.
- [42] At the time of assessing this decision, the relevant Proposed Plan rules are not in effect and are also subject to submissions. The rules could change as a consequence of the submission process. Accordingly, the Council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this land use consent.

NES Soil Contamination Considerations:

- [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] As part of the application documents, the applicant has submitted an assessment of environmental effects (AEE) for undertaking earthworks on a HAIL site, dated July 2017, prepared by Environmental Consultants Otago Ltd ('EC Otago') for 403 High Street, this being the site of the new development. The site has up to 1.0m of fill placed across the site which might have resulted in ground contamination depending on the source and nature of the fill material. The subject site is considered to be a HAIL site, category G3 – Landfill, and the NES is relevant to this application.
- [45] Regulation 8(3) of the NES specifies that the disturbance of soils on a HAIL site is a permitted activity if it meets the criteria listed. The volume of soils to be disturbed will be greater than 25m³ per 500m² of site area (Regulation 8(3)(c)), and is not a permitted activity. There is no preliminary site investigation or detailed site investigation for this site, and as such, the disturbance of soils on 403 High Street will be a **discretionary** activity pursuant to Regulation 11 of the NES.
- [46] Overall, taking into consideration the District Plan, Proposed Plan and NES activity statuses, the land use consent sought is considered to be a **non-complying** activity.

4. NOTIFICATION AND SUBMISSIONS

- [47] The written approval of the persons detailed in the table below has been obtained. In accordance with Section 104(3)(a)(ii) of the Resource Management Act, the Council cannot have regard to the effects of the activity on these persons.

Person	Owner	Occupier	Address	Obtained
Peter James Hawkesby	✓		400 & 400A High Street	5 September 2017

- [48] Not all the immediate neighbours provided affected party approval, so the application was limited notified and the remaining neighbours contacted. Copies of the application were sent to the following parties with submissions closing on 6 October 2016:

- A G Fox: 389 High Street;

008

- DJ McNamara & DW Joseph Hollick: 169 Maitland Street;
- SM Hume & SJ Stewart: 167 Maitland Street;
- Y Yang & CY Zhu: 409A-E High Street;
- The occupiers: 409A-E High Street;
- SM & JS Voorkamp: 411 High Street;
- SL Chow & SJ Lim: 408 High Street.

[49] Two submissions have been received following notification, both in opposition. The submissions are summarised in the table below. Copies of the submissions are appended to this report in Appendix C. A late submission was also received and is attached to this report in Appendix F.

Submitter	Support/ Oppose	Reasons for submission	Wish to be heard?
1. Yong Yang & Chris Ying Zhu	Oppose	<ul style="list-style-type: none"> • Neighbourhood is a residential area predominantly made up of heritage residences. • New building is a large commercial building not in keeping with the local character. • Size, scale, bulk and design will dominate surrounding residential houses. Affect amenity values of residential area. • New building is also in an important heritage precinct. Building of modern style not in keeping with heritage values. Significant adverse effect on heritage and amenity values. • Size of building will have significant adverse effects on submitters' property at 409 High St. • Building will cause significant shading of living court of submitters' property. Significant adverse effects on tenants' use and enjoyment. • New building will provide facilities for outside commercial use for significant periods of time during the week and weekends. • No on-site parking for users of buildings. Significant number of additional peoples and traffic movements in immediate neighbourhood. • Significant adverse effects of new building cannot be avoided, remedied, or mitigated. • Requests that the application be declined. • If consent is granted, requests that the character, scale, and effects of Moana House activity remain the same or less than the character, scale and effects of the activity carried out at 401, 402 and 403 High Street as at the date of the application. • Lists recommended conditions. 	Yes.
2. SJ Stewart & SM Hume	Oppose	<ul style="list-style-type: none"> • Submitters own 167 Maitland Street. • Property developed into a family home where children could be raised in a safe environment. • Submitters' property altered in 2005 so that kitchen and living areas shifted to NE rear, to make the most of all day sun light. • Built well-thought out backyard, with deck, courtyard and garden. An amazing space that gives submitters much enjoyment. • Advised of proposed development 18 July 2017 when given plans by Claire Aitken. Never been 	Yes.

		<p>consulted or asked to discuss development. Submitters displeased with so many aspects of proposal. Applicant has not considered effects of development on submitters' property.</p> <ul style="list-style-type: none"> • Huge impact on private enjoyment of property. Will reduce residential amenity, intrude on privacy. • Oppose because: <ul style="list-style-type: none"> - Significant reduction in sunlight hours. Reduction in amenity, especially courtyard area. - Windows in new building will overlook backyard courtyard and living room. Space intentionally developed for privacy. - Windows on second floor will be large multi-purpose room used by residents and non-residents. Could be large numbers of people looking into backyard and living area at any one time. Concerned because children spend a large amount of time in backyard. - Concerned about number of people using the multi-purpose room. Application vague as to who will be using the room. No limits. - Concerned about inconsistencies in application. Geotechnical report prepared on basis that building one or two storey. Given findings of report and unsupported slope to south of 403 High Street, Council cannot make decision or impose conditions. - Building breaches site coverage, yard and height plane angle requirements. All contributed to the overall bulk and dominance of building when viewed from submitters' property. Effects are amplified due to the close proximity of the building to the boundary and slope of land. - Concerned about contaminated soils and effects these could have on their property. - Submitters state they will not be able to enjoy the lifestyle and amenities properties in residential areas should receive. This includes being surrounded by other residential properties, sunlight, privacy, peace and quiet, landscaping, space between buildings. • Non-complying activity. S104D applies. • Effects will be more than minor. • Contrary to objectives and policies. Objective 8.2.1; Policy 8.3.1. • Inconsistent with Part 2 matters. • Requests application be declined. • If granted, conditions requiring no windows on south end of building, and a higher fence. 	
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

5. ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[50] Section 104(1)(a) of the Act requires that the consent authority have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in the section 3 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.*

- [51] An important consideration in the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. Rule 104(2)(b) allows a consent authority to disregard the effects of an activity if a rule permits an activity with that affect. The Council may choose to apply this process. This requires the establishment of what can occur as of right on the site (permitted activity), and overlays the existing lawfully established development of the site (*Bayley v Manukau City Council, Smith Chilcott Ltd v Auckland City Council, Arrigato Investments Ltd v Auckland Regional Council*). Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan need not be regarded.
- [52] The permitted baseline for the Moana House activity is complicated somewhat by the three separate sites involved, the status of the activity on 401 High Street, and the existing consent for 402 High Street. While the three properties of the Downie Stewart Foundation are clearly related in that they are situated in close proximity to each other and the one organisation manages them all as part of the same activity, the sites are held in separate titles. There are no over-arching existing use rights or existing consent to tie the sites together.
- [53] Residential activity is a permitted activity for all three properties at a density of not less than 500m² per residential unit. There is no limit on the number of bedrooms to a unit. The present residential use of 401, 402 and 403 High Street is therefore permitted.
- [54] A community support activity is not a permitted activity in the Residential 1 zone and is therefore not part of the permitted activity baseline; however, existing use rights also form part of the existing planning environment. The community support activity was initially established at 401 High Street about 1987 when the Dunedin City District Scheme was the applicable planning document. There is no consent for the community support activity, and as residential activity and educational facilities were 'predominant' uses (i.e. permitted activities), it is likely none was required in 1987. However, none of the predominant uses of the Scheme accurately depict the actual activity occurring on-site, and as such, there could be an argument that the existing community support activity of 401 High Street does not have existing use rights.
- [55] The community support activity of 402 High Street obtained consent on 28 January 2004. The consent provides for training and workshops on the ground floor of the existing building. While the consent is light on details and conditions, the application states that workshops will be of one to two days duration, for up to 15 persons. The consent, RMA-2003-357375, discusses the lack of on-site parking for 402 High Street, although a parking breach of this nature is not explicitly approved. It is apparent from the consent, however, that the lack of on-site parking is acceptable.
- [56] In summary, the existing residential activity of the three properties is a permitted activity, but the additional unit within the existing house of 402 High Street will breach the density specified for the zone. The community support activity of 402 High Street is consented, and forms part of the permitted baseline, but only for that site. The community support activity of 401 High Street is possibly unlawful, but has been established for many years and forms part of the existing environment. This is the current situation for these three sites. It is the effects beyond these which are considered in greater detail below.

[57] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of sections 8.13 of the District Plan, and Rules 15.5 and 15.6 of the Proposed Plan:

- Bulk and Location
- Heritage & Design and Appearance of Buildings
- Amenity Values and Character
- Infrastructure
- Transportation
- Hazards
- NES Matters
- Earthworks
- Community Population
- Cumulative Effects
- Sustainability

[58] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site.

Bulk and Location (Assessment Matter 8.13.3)

- [59] The most obvious difference to the current activities occurring on the three subject sites will be the construction and use of a new building at the rear of 403 High Street. The proposed building will be three storeys high (including the lower level used for parking), and will be constructed within the side yard next to the boundary of 401 High Street. The building will breach this yard space by up to 2.0m in respect of the porch and wing walls, but 1.5m by the bulk of the building, and as such will have a height plane angle breach in respect of the same boundary of approximately 10° and up to 27°. The applicant owns both properties, so the breaches are clearly acceptable to this party.
- [60] The proposed building will maintain the yard and height plane angles in respect of the other two neighbours, 167 Maitland Street and 409 High Street. Council would not normally consider a neighbour to be an affected party for bulk and location reasons if there is no breach occurring along the boundary. The proposed building will be 2.9m from the boundary with 167 Maitland Street, and 3.4m from the boundary with 409 High Street, therefore meeting the 2.0m yard requirement. Likewise, there is no breach of the height plane angles occurring in relation to these two boundaries.
- [61] Maximum height for buildings in the Residential 1 zone is set at 9.0m. The proposed building scales off the elevations submitted with the application at approximately 9.5m, measuring from the apex of the roof to the floor of the garaging. While this appears to be a breach of maximum height, the sloping ground of 403 High Street is to be excavated and the proposed floor level will, immediately below the apex, be lower than the existing ground level. The District Plan defines a maximum height as a measure from the existing ground levels (being the level as at 1 July 2010). Therefore, there is no maximum height breach proposed.
- [62] There are two other bulk and location breaches which will occur should the proposed building be constructed. Firstly, the house and new building combined will cover approximately 50% of 403 High Street. Maximum site coverage for the zone is set at 40%, so the breach is approximately 10% or 55m². The house and new building will also be about 2.5m apart, whereas the District Plan requires two buildings on a site which are not sharing a common wall to have a separation distance of 4.0m.
- [63] The insufficient separation distance is unlikely to be a significant issue in itself. The 4.0m separation is designed to allow for complying yards in the event of a future subdivision and no subdivision is anticipated for this site. Buildings can be built abutting each other provided adequate fire rating is provided, so two buildings less

than 4.0m apart might require an increased level of construction to mitigate fire risk but is not an unsurmountable problem. The fire rating requirements are a building consent matter that has no implications for any other property.

- [64] Another possible reason for maintaining a minimum separation distance between buildings is to allow neighbours to view between the structures. The importance of this is debatable, and any benefits will be dependent on the quality of the 'view' or the access to sunlight that might occur. As two buildings can be built on a site abutting each other as a permitted activity, it does not appear that the maintenance of space, in itself, is the goal of the District Plan rule. I note that the properties to either side of 403 High Street are 401 and 409 High Street. The residents of 411 and 413 High Street might also notice a narrowing of the space between the existing house and proposed building.
- [65] The house of 401 High Street sits further back and higher on its site than the house on 403 High Street. It also presents a solid wall to the subject site, and is in itself an obstruction to any view shaft that might otherwise exist between the proposed and existing buildings on 403 High Street. Because of this, it is unlikely that the lack of separation distance will have an adverse impact on the neighbouring properties to the west of 403 High Street for reasons to do with views or space. Looking back the other way, not only is the property of 401 High Street one of the subject sites, but the position of the house on that site, and its lack of windows along the western wall, means that there is currently no view across 403 High Street visible from 401 High Street anyway and consequently, no loss of view to be had.
- [66] The site coverage breach is more important because it indicates that the site will be potentially over-developed for the Residential 1 zone. The District Plan seeks to maintain a balance between natural and manmade elements in the residential zones as this contributes to the amenity and character of an area. While the District Plan intentions are important, the existing environment is also relevant, particularly when the neighbourhood is well established. The site is situated within an inner city area where the site coverage is somewhat higher than that typical of the Residential 1 zone.
- [67] The properties surrounding 403 High Street have site coverages ranging from approximately 25% (169 Maitland Street) to 64% (413 High Street). 401 High Street, being part of the same community support activity, has an existing site coverage of approximately 56%. Overall, the neighbouring properties of 389, 401, 409, 411 and 413 High Street, plus 167 and 196 Maitland Street, cover approximately 53% of the corresponding land area. The subject site of 403 High Street, with its current site coverage of approximately 19%, is therefore well below average for the immediate neighbourhood. Any building placed on the rear of the property is going to bring about a noticeable change to the environment of the neighbouring properties if for no other reason than the neighbouring residents are used to the open space, but an overall site coverage of 50%, however, is not excessive in respect of the immediate neighbourhood.
- [68] The proposed building will be 0.5m closer to the boundary of 401 High Street than the District Plan permits. The effects of this encroachment, and corresponding height plane angle breach, will be confined to 401 and 403 High Street, both subject sites of this application. The proposed yard and height plane angle breach is therefore acceptable.
- [69] There will be no bulk and location breaches in respect of the southeast and southwest boundaries next to 167 Maitland Street and 409 High Street. However, the owners of both these properties have submitted in opposition to the application, and have raised the bulk of the proposed building as an adverse effect on their respective properties. One notes the site coverage, yard and height plane angle breaches of the proposed building, and comments:

'These all contribute to the overall bulk and dominance of the proposed building when viewed from our property. The effects of this are amplified due to the close proximity of the building to the boundary and the slope of the land ...'

- [70] The sections of both 167 Maitland Street and 409 High Street are at a lower level to the back yard of 403 High Street. From my site visit, I conclude that both of these properties have been excavated in part at some point in the past although fill on 403 High Street suggests that the subject site has also been raised. 401 High Street is higher again, and in fact, the high point of the local topography appears to be at the boundary of 401 and 403 High Street. This general topography does not assist to minimise bulk and location effects of the proposed building on the neighbouring properties, but nevertheless, being uphill of another property does not negate the permitted baseline for development of a site. The proposed building does not breach any of the bulk and location provisions in relation to 167 Maitland Street or 409 High Street. A fully permitted house could be built in the position, and at the scale, proposed for the community support building and would have exactly the same bulk and location effects. I will also note that that the proposed building is not excessively large when compared to some of the historic two-storey homes along High Street, or the multi-unit building of 409 High Street.
- [71] Both neighbouring submitters have raised shading as a concern. The Assessment Matters for the Residential Section of the District Plan do not specifically mention shading as being a consideration when assessing the effects of a building in this zone. However, shading is one element in the effects of bulk and location on amenity in Assessment Matters 8.13.3., 8.13.5 and 8.13.6. Yard, height plane angle and maximum height provisions are the primary controls established to manage the shading effects to an acceptable level where these requirements are met in relation to an adjacent site. Shading is to be expected in any built environment.
- [72] The applicant has provided two sets of shading diagrams. One follows the shading that would result from a fully compliant building at the rear of the subject site, and the other, the shading that would result from the proposed building mid-summer, early March, and two days before the shortest day of the year. Comparing the two sets of diagrams, it is evident that the proposed building will have few additional effects over and above the shading created by a permitted building, which is not surprising given that the proposed building complies with the bulk and location requirements along the two neighbouring boundaries.
- [73] There is no question that the proposed building will introduce shading effects as the back yard of 403 High Street is currently vacant. But it is also likely that the neighbours are already experiencing some shading arising from the topography, the existing houses on 401 and 403 High Street and the fence along the back boundary. Unfortunately, the applicant has not provided shading diagrams for the current situation, and therefore it is not possible to compare the existing shading with that proposed.
- [74] The owners of 167 Maitland Street have particular concerns about shading effects on their landscaped back yard and decking where they spend quality outdoor time. These areas will not be shaded in the morning except by the house of 167 Maitland Street itself. Shadows are shorter at midday, and there will be minimal shading effects around noon or early afternoon from the subject site (even with the proposed building in place). It is possible the existing fence and shrubbery along the boundary already have shading effects which are worse than the proposed building.
- [75] Later in the day, the shadows will lengthen and will move in an easterly direction across the back yard and along the side of the house. The shading diagrams indicate that the decking should not be shaded at any time over the spring to autumn period.

However, the shading of the back yard will be an all-day affair in mid-winter. This winter shading is largely an existing situation, and it would appear that the proposed building will be predominantly responsible for early afternoon shading. Unfortunately, it is not clear how this shading compares with that cast by the existing fence and shrubbery on the boundary, but there must be some existing shading occurring.

- [76] The owner of 409 High Street submits that the proposed building will create '*... significant additional shading of the living court of our building.*' The building on 409 High Street is a two to three-storey structure containing five residential units. The proposed building will have shading implications for the upstairs and downstairs units at the northern end of the building, but few, if any effects, on the other three units. I note that the side of the units facing 403 High Street is occupied by the kitchen, dining, bathroom and laundry facilities.
- [77] The shading effects on the units of 409 High Street will be confined to morning hours, with the proposed building casting more significant shading over the winter months. Again, from the shading diagrams, mid-winter shading of 409 High Street appears to be an all-day event only partially due to the proposed building. Because the rear of 403 High Street is currently vacant, there will be additional shading effects. Given the topography of the immediate area and the two existing two-storey houses on 401 and 403 High Street, it is very possible that the units of 409 High Street are already being shaded in mid-winter.
- [78] When talking of the 'living court' of the building, I understand the submitter to be speaking of the outdoor area on the north-eastern side of the building. This area contains a path, lawn and a small area of asphalt for parking. There is no decking on the upper floor, and no seating area at ground level for either unit. As the property is lower than 403 High Street, and behind a retaining wall with a small boundary wall on top, there is already shading of this area occurring. The photo in Appendix D of this report shows approximately half this open space to be in shadow at 11.13am, late November. While the proposed building might create additional shading overall, it will not be introducing shading to this location, and any shading will be no worse than would be expected for a fully complying structure.
- [79] Overall, I consider that the adverse effects on the neighbouring properties due to the bulk and location of the proposed building will be no more than minor. The building will respect the yards and height plane angles, and any associated effects on the neighbours could be replicated by a permitted structure. The bulk and location breaches are in respect of the applicant's own properties, and will have no effects on the neighbours. If anything, the breaches will improve the situation for the neighbours as it will allow the proposed building to be constructed further away from their properties.

Heritage & Design and Appearance of Buildings (8.13.6)

- [80] The subject sites are all situated within TH14 – High Street Heritage Precinct, and the house of 402 High Street is a listed structure B324. The construction of a new building within a heritage precinct is a controlled activity where the control is in respect to the external design and appearance of the building, including building material and colour.
- [81] There will be no changes to the exterior of the existing buildings on 401, 402 and 403 High Street. This is particularly significant in respect of 402 High Street as this is a building listed in Schedule 25.1 of the District Plan, and has its façade and bulk appearance to High Street protected. The proposal will have no implications for the façade or bulk of this existing building, and any interior alterations are not a concern of the District Plan for this building.
- [82] The proposed building for 403 High Street is to be constructed to the rear of the existing house, and will have dimensions similar to a large two-storey dwelling with

basement. It will be constructed of timber and plaster, and have a corrugated iron roof. The colour of the plaster has not yet been finalised but will be generally 'earthy' to compliment the cedar timber. The cedar will be finished in natural stain or oil.

[83] One submitter believes that the proposed building will substantially alter the character of the heritage precinct from a residential zone. It is not clear whether the submitter is speaking of the appearance of the building and its effect on the heritage precinct or the establishment of the community support activity at 403 High Street, but there is no direct comment in the submission on the particulars of the building. The concerns are expressed in terms of the character of the residential area and parking pressure. The effects of a community support activity on the heritage precinct are outside the control of the Council, and cannot be considered. I will note, however, that the community support activity is already established in the area at much the same scale, but on 402 High Street. Therefore, any associated change to the character of the area and parking pressure is already present although the submitter may not be aware of this.

[84] A second submitter considers the building to be a large commercial building that is not in keeping with the residential character of the neighbourhood. Furthermore, the building is a modern style which the submitter does not believe fits in with the heritage of the surrounding area, and states:

'It is important to protect and enhance the heritage values and amenity values of the entire heritage precinct from the centre to the periphery. The size, scale, bulk and design of the building will have a significant adverse effect on the heritage values and amenity values of the surrounding heritage area.'

[85] Council's Policy Planner (Heritage) has considered the application. He has confined his comments to the new building of 403 High Street, and states:

'The proposed new building will be heavily screened from High Street by the existing former house on the site. Due to the drop in land levels towards the west, it will not be visible from Maitland Street while it is likely the adjacent apartment block will partially screen views from William Street. The scale and design of the new building is residential in character and will not stand out.'

'I therefore consider that the proposed development will not harm the townscape heritage values of the High Street Heritage Precinct.'

[86] Council's Landscape Architect has also assessed the application. He notes that there are 'predominantly high heritage values' in this location, and there is the potential for a new building to provide an uncharacteristic intrusion into what is a distinctive heritage setting. He comments:

'The proposed structure would be unlike the more traditional buildings surrounding it, but there are two factors which would help to lessen its visual prominence and would assist with making it a relatively well integrated structure in this environment. The first is the design which I understand would be relatively simple and visually recessive, (cedar timber and earth tone plaster); the second is its location behind the existing dwelling fronting High Street, which provides a visual screen and would not disrupt the heritage character of the street.'

'Overall, from an urban design perspective, (as distinct from heritage comments provided by Dan Windwood), I consider the adverse effects of this proposal would be no more than minor.'

- [87] I also note that the proposed building is to the rear of the two-storey house on the same site. The heritage precinct is focussed on High Street and is only one property wide on both sides of the road. As such, 409 High Street, despite being immediately next door to the proposed building, is not part of the precinct as it is a rear site. The only point where the proposed building will be visible from High Street will be between the existing houses on 403 and 411 High Street. The gap is approximately 8.3m wide, and is part of 409 High Street. The view of the proposed building from the precinct itself will therefore be, at best, fleeting to passing pedestrians and traffic.
- [88] A modern building within a heritage precinct is not in itself unacceptable, as can be seen at 417 High Street. The house on this property is a prominent structure, coloured red, two to three-storeys high, and still a modern design despite being 22 years old. Consent was issued in 1995 as it breached site coverage and height, but there was no assessment as to its precinctual values probably because the heritage precinct was not defined by the District Plan at that time. Whether or not the house is liked by an individual, or whether it would get consent today under the heritage precinct rules, does not alter the fact that it makes a definite and very modern contribution to the character of the precinct. In comparison, the proposed building will be a far less dominating and confrontational structure, and will be tucked away to the rear of the existing house on the subject site.

Amenity Values and Character (8.13.5)

- [89] The Resource Management Act 1991 defines 'amenity values' as:

"... those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes"

- [90] The existing environment and character of an area largely determines the amenity values of any site, but amenity values are also expressed by the District Plan through the zoning provisions. In this case, the subject sites are all zoned Residential 1, and a community support activity occurring in this location is a fully discretionary activity. However, the community support activity of 401 and 402 High Street is already well-established and is part of the existing environment. Up to this point, however, the community support activity has been housed within the existing dwellings on the subject sites, and has shared the premises with residential activity. This proposal seeks to construct a new building purely for community support activity use.
- [91] Overall, I do not consider that the community support activity will have any significant adverse effects on the residential environment. The proposal will transfer the site of the activity from 402 High Street to 403 High Street, but is not expected to introduce any additional community support activities to this section of High Street. Although one submitter opposes the application because it will alter the character of the residential zone and will exacerbate an existing parking problem, the fact is the community support activity is already present; the application merely seeks to shift it across the road.
- [92] For the immediate neighbours of 403 High Street, the construction of the new building, and the establishment of the community support activities within it, will bring the activity much closer to their properties. Firstly, there is the physical presence of the building which, as discussed above, will comply with yards and height plane angles in respect of the neighbours, but will also impose some shading on these neighbours over part of the day for a period of the year at least. The building itself, despite not being a residential house, will not be greatly different to a large two-storey dwelling and will be comparable to the historic housing already present on-site and on other High Street addresses in the near vicinity.
- [93] The other consideration is the community support activity itself which will consist of administration, training and courses, counselling, storage and vehicle parking. The

parking on the ground floor will be accessed from the southwest, next to the boundary of 409 High Street, and will utilise the existing driveway. The application contradicts itself by stating that the garaging is to be used for two existing vans currently parked at the kerbside outside 401 and 403 High Street and for staff vehicles to be stored securely during night shifts, or alternatively, it will be used purely for staff parking. Either way, the garaging will not be used for short term parking associated with visitors to the new building. The parking will therefore be similar to that which could be expected for a dwelling, and the vehicle movements could be occurring on-site anyway in association with the existing house.

- [94] It is not clear which will be the predominant route for persons to enter the proposed building. Three routes are possible. One is along the driveway and up an external staircase between the two buildings of 403 High Street. Another is via the existing pedestrian access to 403 High Street and past the front door of the existing house. And the third is via the rear yard of 401 High Street. The side doors of the proposed building cannot be used without people walking over the yard of 401 High Street, at least slightly, so there will definitely be more interaction between these two properties than is currently occurring. None of these options are expected to impact on the neighbours of 167 Maitland Street, given the present occupation and use of the courtyard at the rear of 401 High Street and the fact that no persons will pass close to their boundary. If people use the driveway for access, there could be some impact on 409 and 411 High Street, but this will be mitigated by the distances to the houses themselves. No person will pass in close proximity to the housing of these two properties.
- [95] The submitters of 167 Maitland Street have concerns about their backyard being overlooked by persons in the proposed building, and the adverse effect this could have on their privacy. Furthermore, the building will not be a residence, and at times there will be a large number and variety of people present with the opportunity to view the submitter's backyard, and any family within that space. If the consent is to be granted, the submitter has requested that there be no windows on the southern (rear) wall of the proposed building.
- [96] I have spoken with the applicant's agent who is agreeable to this request. This will affect the large room on the first floor and a counsellor's office on the second. Both rooms also have external east and west walls, so the lack of windows on the south wall will be of limited inconvenience. Alternatively, if it is considered desirable to have openings along the south wall on either of these floors, there is also the option of having high windows which let in light but do not allow people to look out and down, or have a glazing of a type that lets in light but restricts observers and views.
- [97] In regards to windows on the western wall overlooking 409 High Street, I note that the windows shown are generally small and/or high. They do not appear to have been designed for the purpose of framing a view of any sort, and perhaps are positioned primarily for letting in light. I cannot say, however, whether or not they will allow a person to overlook the residential units of 409 High Street or, if so, whether this will be considered a problem. I note that the units on 409 High Street face the other way, but nevertheless, the kitchen and dining areas of the end two units are next to the subject site and people in these rooms might be observed from the proposed building. If consent is granted for the new building, any privacy concerns for these units could be addressed simply by installing netting curtains, but the residents might not appreciate needing to do so.
- [98] The proposed building is designed to connect primarily with the back yard of 401 High Street, and as such, I consider that the effects on other neighbours' amenity will be less significant than might otherwise be anticipated. There is no outdoor amenity area on 403 High Street on the south or west side of the building, so little expectation of people frequenting these areas which would potentially compromise neighbour's amenity. However, while the proposed building will be present, interaction between

the building, its occupants, and the neighbours need not be significant and can be managed by careful placement of windows or selection of glazing used, limited access to the southern and western curtilages of the building, and the directing of pedestrians to the building via routes other than the driveway.

Infrastructure (8.13.10)

- [99] The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the application. She notes that a review of Council's GIS records shows a 125mm diameter water pipe and a 150mm diameter wastewater pipe in High Street.

Density Assessment

- [100] Residential 1 rules in the Dunedin District Plan set a minimum site size of 500m² per residential unit. The Consents and Compliance Officer notes that the new building of 403 High Street will be built in the yard space and height plane angle shared with 401 High Street, and will have more than maximum site coverage at 50%. The Water and Waste Group do not oppose this application, as the Proposed Plan would permit development at this density. However, water saving devices are required and a Stormwater Management Plan for 403 High Street is also required due to a large increase in the imperviousness of the site.
- [101] In respect of 402 High Street and the establishment of a second residential unit within the existing building, the Consents and Compliance Officer note that the property is undersized for two units. However, under the Proposed Plan rules, it is proposed that residential activity will be a permitted activity at a density of one habitable room per 45m². The proposed residential activity of 402 High Street would therefore be a permitted activity in the Proposed Plan if the proposed rules are confirmed by Council.

Water Supply:

- [102] The Dunedin City Council Water Bylaw 2008 (revised 2011) sets out the requirements for connections to the water supply network. Each lot must be serviced from an individual Point of Supply. Both 402 and 403 High Street are serviced for water via a standard 20mm residential connection, and 401 High Street is serviced via a 25mm water connection with a water meter.
- [103] As non-residential activities are proposed for 403 High Street in the new building, the existing 20mm residential connection at must be cut and plugged at the boundary and upgraded to a 25mm water connection with water meter. An "Application for Disconnection of a Water or Sewer Connection" will need to be submitted to cut and plug the existing connection and an "Application for Water Supply" is to be submitted for the installation of the larger service. An RPZ backflow prevention device will need to be installed on the new High Street water connection for 403 High Street. Details of the RPZ backflow prevention device and its proposed location will be approved through the building consent process.
- [104] The Council has no record of a boundary backflow prevention device at 401 High Street. Generally, a testable boundary backflow prevention device is required on all "non-domestic" water connections. It is noted that there are no physical changes to this property as part of LUC-2017-418. The Consents and Compliance Officer advises that a testable boundary backflow prevention device should be installed on the existing High Street water connection for 401 High Street. This requirement will be assessed and addressed under the Water Bylaw at a future time. All RPZ backflow prevention devices must be installed immediately downstream of the existing water meter, just inside, and as close as practicable to, the customer's property boundary.

Fire Fighting Requirements

- [105] All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies. There is a fire hydrant (WFH02866) 44.0m from the development entrance. Based on SNZ PAS 4509:2008 a W3 (25l/s) zone requires a fire hydrant

within 135.0m and a second within 270.0m. The development will be compliant with these fire hydrant requirements.

Stormwater

- [106] The proposal is non-compliant to the current District Plan rules of density and site coverage for a Residential 1 zone. The imperviousness of the current site at 403 High Street is going to increase quite significantly, therefore a Stormwater Management Plan (SWMP) is required. A Stormwater Management Plan (SWMP) prepared by an authorised/certified hydraulic/hydrological engineer must be submitted to the Development Engineer, Water and Waste Group for approval prior to any construction commencing, and will need to discuss the following:
- a) An assessment of the current and proposed imperviousness of the site;
 - b) Detail of proposed stormwater management systems for the development to accommodate for any excess runoff from extra impervious surfaces;
 - c) Stormwater calculations which state the difference between the pre-development flows and post-development flows and how to manage any difference in flow;
 - d) Secondary flow paths; and
 - e) An assessment of the current network and its ability to accept any additional flow from the proposed development.

Wastewater Services

- [107] In order to reduce water consumption and therefore the volume of wastewater generated, the applicant will need to install water saving devices including, but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers.

Conclusion

- [108] The Water and Waste Group has no issues with the servicing of the additional residential unit and new community support activity building subject to conditions as detailed above.

Transportation (8.13.7 & 20.6)

- [109] The application has been considered by Council's Planner/Engineer – Transport. He notes that the dwelling on 401 High Street has an existing garage at the front of the site, with access directly to High Street. The applicant notes that the garage will be used to teach carving and store related tools, in line with the present situation. The existing access provisions for this dwelling, and the lack of on-site manoeuvring, will remain unchanged which is considered to be acceptable.
- [110] 402 High Street does not have any vehicle access. This does not change with the proposal, and Transport considers this is acceptable.
- [111] The existing dwelling and proposed new building at 403 High Street will achieve vehicle access via the existing vehicle access from High Street. The existing vehicle access is considered to be constructed in general accordance with District Plan requirements, and does not require upgrading as a consequence of the proposed development. On-site manoeuvring will be provided for vehicles parked in the garaging of the new building.
- [112] The applicant owns two vans which are typically parked on the street outside the site. The applicant also states that, due to the nature of activities within the site, it is very rare for visitors or participants to own and use a vehicle. Three on-site parking spaces will be provided in the garage within the proposed new building at the rear of 403 High Street. The Planner/Engineer – Transport comments:

'Given the unique characteristics of the activities within the site, as described in the application, Transport considers these parking provisions to be acceptable. The surrounding transport network is considered to have sufficient capacity to absorb any parking shortfall that may be generated by the existing and proposed activities.'

- [113] Overall, Transport considers the proposed development to have no more than minor adverse effect on the safety or functionality of the transport network.
- [114] One of the submitters has concerns about the proposed community support activity at 403 High Street creating parking pressure on High Street. I note that the community support activity is already established in High Street, in the building of 402 High Street, and any parking demand generated is already present. There is no on-site parking available for 402 High Street, at all. Transferring the activity across the road will have very limited change, if any, on the traffic effects and parking of High Street.

Hazards (8.13.17)

- [115] The applicant submitted a geotechnical report prepared by GeoSolve Ltd which investigated the ground conditions of 403 High Street on the site of the proposed building. The report notes that the subject site has uncontrolled fill and topsoil to a maximum depth of 1.1m overlaying firmer ground conditions. It recommends that all excavations should be inspected by a geotechnical practitioner during earthworks, and that particular care should be taken not to create slope instability along the unsupported southern slope (within 167 Maitland Street). The report continues with a number of conditions to ensure that the development of the site proceeds in an acceptable manner.
- [116] Council's Consulting Engineer, Stantec, has considered the application in relation to the Hazards Register, street files and available aerial photography. He notes that there are no hazards identified for this site, and that the application has been submitted with a report from Terramark Ltd and GeoSolve Ltd. The underlying geology of 403 High Street consists of Olivine basalt in a flat area with slopes less than 12°.
- [117] The Consulting Engineer notes that the applicant has provided conceptual plans for the development, but there are no details on the precise extent of earthworks or the heights of proposed retaining structures. The overall scale of earthworks involved has been determined on the basis of the applicant's advice in the application. The applicant has engaged GeoSolve Ltd to provide specific advice regarding the ground conditions. It is noted that there are no potential instabilities of concern, and the Consulting Engineer does not consider that the proposed development of 403 High Street will create or exacerbate instabilities on this or adjacent properties if the applicant adheres to the recommendations of GeoSolve Ltd.
- [118] Stantec recommends the following advice:
- *No earthworks may be undertaken until building consent has been granted.*
 - *The works are close to the boundary, and the planner may wish to consider whether the neighbour is affected by the proposal.*
 - *We recommend that appropriate third party liability insurances are in place which identify nearby structures prior to undertaking any excavation that might affect others' land;*
 - *All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s;*
 - *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;*

- 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;
- Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction;
- All conclusions and recommendations provided by GeoSolve in Section 7 of their report be attached as conditions to the application.

NES Matters

- [119] The site has approximately 1.0m of fill placed across the site which might have resulted in ground contamination depending on the source and nature of the fill material. As such, the subject site is considered to be a HAIL site, category G3 – Landfill, and the NES is relevant to this application.
- [120] The applicant has submitted a report prepared by Environmental Consultants Otago Ltd (EC Otago) as the proposal involves the disturbance of soils at a greater rate than the permitted 25m³ per 500m², and will dispose more than 5m³ of soil per 500m² from the property. EC Otago conducted soil sampling across the backyard of 403 High Street. In total, there were 15 samples taken at a depth of 0.3m to 0.5m except where hard fill prevented sampling to this depth. The samples were divided into five composites, and individual analysis of samples 2A to 2C was also undertaken, testing for heavy metal and Polycyclic Aromatic Hydrocarbon (PAH).
- [121] The majority of the samples exceed the residential Soil Contamination Standards (SCS) for lead, but are below commercial/industrial outdoor workers SCS except for the composite of 2A to 2C which exceeded both. Individual analysis of these samples showed exceedance of residential, but not commercial/industrial outdoor workers, for 2A and 2C. Overall, the results indicated a large variance across the site.
- [122] The proposed works will removed the fill material from the site and will introduce clean fill as required. The majority of the site will be covered by the proposed building or hard surfacing, and this is likely to improve the situation regarding the existing soil conditions as the contaminants will be removed. During the earthworks, and the exposure of the bare ground, the primary risk will be to the site workers. EC Otago has provided a Contaminated Soils Management Plan (CSMP) for the period of the site works which, if adhered to, will mean that the adverse effects from the soils will be less than minor.
- [123] The EC Otago report has been revised by Council's Consulting Engineer, Stantec. He notes:
- 'The analytical results obtained for the soil sampling undertaken by EC Otago show that the majority of the samples had concentrations of lead as a contaminant that exceeded the Soil Contaminant Standard (SCS) for a residential land use. Some samples also showed SCS exceedances for polycyclic aromatic hydrocarbons (PAHs). EC Otago concluded correctly that there is a high degree of contamination variability across the site and that extensive hot spots of contamination are present.'*
- [124] The proposed site works will include removal of up to 210m³ of contaminated soil for off-site disposal and the replacement of much of this volume with imported cleanfill material. The necessary site activities required to excavate the contaminated material will create potential health, safety and environmental issues for workers and possibly the general public. The Consulting Engineer notes that EC Otago has therefore prepared a CSMP to provide a thorough set of best practice requirements and actions to mitigate the H&S and environmental effects of the site works.

- [125] The CSMP is essentially a standard document of EC Otago's (and which Stantec has also reviewed previously on a number of occasions), but with the document suitably re-jigged to suit the purposes and context of the current situation. As such the Consulting Engineer considers that the CSMP document is thorough, complete and, provided that its provisions are conscientiously and competently applied by the site contractor, an appropriate level of site health and safety and environmental mitigation will be provided, both for construction workers and the general public. A single consent condition relating to contamination issues is proposed by EC Otago; this is that earthworks should be carried out in accordance with the CSMP. Stantec supports this condition and does not believe that any additional conditions are necessary, at least with respect to earthworks activities at the site.
- [126] The Otago Regional Council has also reviewed the EC Otago report. It confirms that the subject site is a HAIL site because of the uncontrolled fill on-site, but notes there has been no detailed site history investigation undertaken to establish if there have been any other contaminative land uses. The Otago Regional Council notes that the EC Otago report does not contain the level of detail and assessment expected from a detailed site investigation, but does include the results from a preliminary sampling exercise. The lead concentrations mean that the site is considered to be 'Contaminated for High Density Residential Use', as well as standard residential use.
- [127] While there is a risk to human health indicated by the results, the Otago Regional Council considers that the long term risks will be effectively mitigated by the excavation and off-site disposal of contaminated fill material. The CSMP is generally comprehensive and covers all of the main topics of consideration for managing a HAIL site. Particular regard should be given to the unexpected discovery protocols and the control of dust to mitigate against the possible presence of asbestos fibres in the soil.
- [128] The Otago Regional Council recommends that the workers be appropriately inducted. The CSMP should be updated slightly prior to commencing works to include specific Site Manager, Health and Safety Officer, Suitably Qualified Experience Person, Downie Stewart, and emergency contact details, as well as a number of other site specific details for this project. Testing of soils for off-site disposal should also be undertaken as per the receiving facilities requirements.
- [129] It is recognised that the site is a contaminated HAIL site. One submitter is concerned about the effects disturbing the soils will have on their property. If the proposed works are undertaken in an appropriate manner as per the CSMP, there should be minimal risk to the neighbouring sites. Earthworks of HAIL sites are a fairly common event, and are usually completed without creating issues.

Earthworks (17.8)

- [130] The proposed development of 403 High Street will involve 210m³ of cut, and approximately 2m³ of clean fill introduced to the site. The maximum depth of cut will be 3.3m, situated near the boundary with 401 High Street. Not only will the proposal require consent under the Earthworks Section of the District Plan, but the earthworks will also breach the maximum soil disturbance allowed under the NES for HAIL sites. The District Plan directs the Council to consider the following:
- [131] a) *Adverse effect on the amenity of the neighbouring properties*
- The proposed earthworks have the potential to adversely affect the amenity of neighbouring properties, primarily during the construction period due to adverse noise, vibration and dust effects. Most of the earthworks will be in respect of excavation and removal from the site, therefore involving heavy vehicle movements as well. Provided best practice methods are adopted, including the restriction on the hours of works, the period of disturbance for neighbours will be typical of residential development works. They will also be temporary and confined to the construction period.

[132] b) *Effects on visual amenity and landscape.*

The proposed earthworks will have next to no impact on visual amenity or the wider landscape. The subject site is barely visible from public locations, and has no landscape values at all. Once the initial period of soils exposure has passed and the building and site landscaping established, the visual amenity of the site is likely to improve for the neighbours given that the site presently has no visual quality except as green space.

[133] c) *Effects on any archaeological site and/or any cultural site.*

There are no known archaeological or cultural sites at this location. The applicant has identified a bluestone wall along the boundary shared with 409 High Street which might have archaeological values, but this should not be impacted upon in any way by the proposed earthworks. While there are the remains of an earlier building on-site, it is uncertain if this was pre-1900. If required by Heritage New Zealand, the applicant will obtain and archaeological authority before works commence.

[134] d) *Effects on the transportation network, caused by the transport of excavated material or fill.*

EC Otago estimates that there a maximum of 20 truck movements to and from the site during the excavation period to remove 201m³ of material from the property. There will be a small amount of clean fill brought to the site as well. The trucks will access the site via the existing vehicle crossing and driveway, and should have minimal impact on the neighbours and the transportation network. High Street is an arterial route with a 14.0m wide carriageway that will easily accommodate a large vehicle. There is also a bus stop extending across the driveway entrance which will maintain a clear length of kerb at almost all times, aiding manoeuvrability and visibility for trucks. Any material tracked onto the road will need to be cleared by the contractor as soon as possible.

[135] e) *Effects from the release of sediment beyond site boundaries, including transport of sediment by stormwater systems.*

Because the site soils will be exposed during the earthworks period, there is a possibility of sediment being released from the site. Given that the material has some contamination, it is incumbent on the applicant to insure that this does not occur. The CSMP will have conditions on the management of the earthworks, and provided that these are adhered to, EC Otago considers that the adverse effects on surface and stormwater discharges will be less than minor. No additional adverse effects are anticipated from vertical infiltration and recharge into groundwater. Likewise, the CSMP has conditions regarding the release of dust which is particularly important for the safety of the site workers who will be exposed to any such dust.

[136] f) *Cumulative effects relating to any of these matters.*

The earthworks are not anticipated to have any cumulative effects in respect of the above matters.

[137] g) *Design and engineering of retaining structures and earthworks.*

The largest cut undertaken as part of the excavations will be approximately 3.3m near the boundary of 401 High Street. The cut will be retained by the ground floor wall of the proposed building. 401 High Street is part of the Moana House operation, and any adverse effects will be limited to the applicant's own properties. No earthworks will be permitted until such time as a building consent has been obtained, thereby minimising the period of time that the cut is exposed and unsupported. The back yard of 403 High Street is already terraced from historic earthworks, and the proposed development of this land is likely to improve stability by removing uncontrolled fill and supporting the main cut. No earthworks are to be undertaken except under the supervision of a suitably qualified geotechnical practitioner.

- [138] h) *Effects on the stability of land and buildings.*

The proposed earthworks will cut close to the boundary with 401 High Street, but the cut will be retained and no risk to the stability of the house and buildings on 401 High Street is anticipated.

- [139] The neighbours of 167 Maitland Street have noted that the bank within their property, to the south of the subject site, is unsupported. GeoSolve Ltd has also noted the presence of an unsupported bank in this location, commenting that, '... *the temporary and long-term stability of this slope must be considered, and ground retention will likely be required.*' As the bank is on the neighbouring property, I cannot say if the retention of the bank will be permitted or appreciated by the neighbours should the applicant seek to do so. The pressure on this bank is unlikely to be due to the earthworks and more likely to be a result of surcharge introduced by the construction of the new building. The construction will be managed by suitably qualified persons who will have no reason to not recognise any risk to ground stability, and should be able to manage it in accordance with best practice. This is a building consent issue.

- [140] i) *Effect on the surface flow of water and on flood risk*

There is no surface flow of water through the subject site, and no flood risk before or after the proposed earthworks.

- [141] j) *Effects on underground utilities.*

There are no known underground utilities in this location which will be affected by the proposed earthworks.

- [142] *Conclusion*

Earthworks are a necessary component of most new developments and, provided they are managed appropriately, the adverse effects will be acceptable. They will also be temporary. In this case, the proposed earthworks are complicated somewhat by the presence of contaminated soils, and the presence of the neighbour's bank. The CSMP will provide controls on the management of the works to minimise the risk to human health from the disturbance of the soils. Regarding the stability of the bank on the neighbouring property, it is in the applicant's interest to ensure that the new building will have secure foundations and consequently, that the bank remains strong. It may be possible to undertake the development of the site without needing to consider the bank at all, but any works on the bank must have the neighbour's approval to proceed.

Community Population (8.13.8)

- [143] The District Plan directs the Council to consider the displacement of residents from a residential area due to the proposed activity, and the adverse effect on existing community support activities that might result from the removal of the resident population. In this case, the proposed works will not displace any residents from the subject site, and in fact, will increase the residential occupation of the existing house on 402 High Street.

- [144] Rather than the proposal adversely affecting the operation of the community support activity of Moana House, the proposal is expected to enhance the community support activity. The assessment matter does not entirely relate to this scenario as the existing community support activity draws its participants from outside the local community, and the proposal will not displace any residents. Therefore, there can be no adverse impact on this community support activity from any changes to the community population.

Cumulative Effects (8.13.13)

- [145] The nature of cumulative effects is defined in *Dye v Auckland Regional Council I* [2002] 1 NZLR 337, as the "... *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*".
- [146] The District Plan directs the Council to consider the cumulative effects on amenity and the environment. There are two aspects about this proposal which have the potential to have adverse cumulative effect on the neighbourhood: 1, the increase density at 402 High Street, and 2, the new community support building.
- [147] The additional residential unit within the existing house of 402 High Street will breach the permitted density of development for this zone. However, there will be no new development occurring, and in order to allow the additional residential unit to be established, the community support activity already operating from this building will move out. As such, there is likely to be less activity (comings and goings) with the second residential unit than the present community support activity at this address. The building is a large house that could accommodate a large group of residents as a permitted activity provided all the residents functioned as one household and used the one kitchen. The establishment of a second kitchen is unlikely to have any impact on the wider neighbourhood or the general nature of activity within the house.
- [148] This community support activity has resource consent to operate from 402 High Street, and unless surrendered, this consent will allow a community support activity to re-establish in this building in the future. It is therefore possible that both 402 and 403 High Street will be used for community support activity without further assessment by Council. This could have cumulative effects on the neighbourhood if the community support activity becomes the predominant activity defining the nature of the area. Therefore, it is my opinion that the existing consent for 402 High Street should be surrendered should consent for 403 High Street be granted. Otherwise, the transfer of the existing community support activity to another site will not have cumulative effect on the area.

Sustainability (8.13.1)

- [149] The District Plan seeks to enhance the amenity values of Dunedin and to provide a comprehensive planning framework to manage the effects of use and development of resources. It also seeks to suitably manage infrastructure.
- [150] It is my opinion that the establishment of the existing community support activity across the road to 403 High Street will have adverse effects on amenity which are less than minor. The activity is already occurring in this neighbourhood, and it is only the address of the activity which is changing to a nearby site. The building will be used for non-residential purposes. Pedestrian access to this building can be achieved via 401 High Street and/or the existing path to 403 High Street. The orientation and design of the building means that there will be limited interaction of the inhabitants with the neighbours to the south and west.
- [151] The new building is at the rear of 403 High Street, and will develop an open area of back yard that is currently underutilised and provides limited amenity open space for the residents of 403 High Street and the adjoining neighbours. The proposed development of this land is considered to be sustainable use of this physical resource.
- [152] The residential activity of 402 High Street and the new building on 403 High Street will sustainably managed infrastructure. Water saving devices are recommended, but there will be adequate capacity within the existing infrastructure to service the properties.

[153] Overall, I am off the opinion that the proposed community support activity and residential activity will be sustainable use of Dunedin's physical and natural resources.

Summary

[154] The building of a new structure at the rear of 403 High Street is considered to have adverse effects which are less than minor on the heritage precinct and the residential area of High Street. The proposed site coverage, while breaching the maximum allowed by the District Plan, is in keeping with the surrounding properties, and the proposed building will be of a similar scale to the larger two-storey residential houses of High Street. The community support activity has been established in this neighbourhood for decades with no evidence of any adverse impact on the surrounding area, and the transference of the existing activity across the road and into a new building will have very few additional effects on the wider area. The design of the new building and its orientation will limit the interaction between the community support activity and the immediate neighbours.

[155] The re-establishment of residential activity in the downstairs space of the existing house on 402 High Street will have adverse effects which are no more than minor. Residential activity is an expected component of the Residential 1 zone, and it is the density of activity which breaches the District Plan. However, there is no new development proposed, and the residential activity will replace a community support activity which is already consented and operating from this building. The lack of on-site parking is an existing situation which does not worsen with this proposal.

6. OBJECTIVES AND POLICIES ASSESSMENT (Section 104(1)(b))

[156] Section 104(1)(b) requires the consent authority to have regard to any relevant objectives, policies and rules of a plan or proposed plan. The Dunedin City Council is currently operating under the Dunedin City District Plan, and the Proposed Second Generation District Plan has been notified. At the time of writing this report, decisions on the Proposed Plan hearings have yet to be released. The objectives and policies of both Plans have been taken into account. The following section of the report assesses the proposal against the relevant objectives and policies of both plans.

Dunedin City District Plan

Sustainability

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	It is my opinion that the relocation of an existing community support activity across High Street into a new building to the rear of the house, and the re-establishment of residential activity in the house of 402 High Street will maintain the amenity values of the area. The proposal is considered to be consistent with this objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values.	The proposed development and use of existing buildings is considered to sustainably managed the existing infrastructure. The Water and Waste Group recommends employing water saving devices, but did not have any concerns about the demands on infrastructure. The proposal is considered to be consistent with these objectives and policies.
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.5	Require the provision of infrastructure at an appropriate standard.	
Objective 4.2.4	Ensure that significant natural and physical resources are appropriately protected.	I consider considered that the new building will protect the physical resource of the High Street Heritage Precinct. It requires no existing house

Policy 4.2.4	Provide for the protection of the natural and physical resources of the City commensurate with their local, regional and national significance.	to be demolished, and is situated to the rear of 403 High Street where its visibility is limited. The proposal is considered to be consistent with this objective and policy.
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	The residential use of 402 High Street is anticipated by the District Plan although not at the density proposed. No new development is associated with the residential activity and it will be difficult to tell that there are two residential units in the existing house of 402 High Street. The community support activity is anticipated by the District Plan for this zone, and has been operating from the applicant's properties for many years with minimal disruption to the neighbourhood. The proposal is considered to be consistent with these policies.
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.9	Require consideration of those uses and developments which: a. Could give rise to adverse effects. b. Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	This is a policy concerned with process. The application has been considered in terms of these matters during the writing of this report. The issue of consistency with the policy has little meaning beyond this.

Manawhenua

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	The proposal has been assessed using the protocol established between Kai Tahu ki Otago and the Dunedin City Council. The proposal is considered to be consistent with this objective and policy.
Policy 5.3.2	Advise Manawhenua of application for notified resource consents, plan changes and designations.	

Residential

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The proposal is considered to be consistent with this objective and policy. The residential use of 402 High Street will take place within the existing residential building. The community support activity is an existing element of the wider neighbourhood.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	The proposal is considered to be consistent with this objective and policy. The second residential unit within the house of 402 High Street will breach the permitted density of development but will not exceed the servicing infrastructure of the area. Likewise, the new community support building is not expected to exceed the capacity of the existing infrastructure.
Policy 8.3.4	Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	
Objective 8.2.5	Recognise and conserve townscape precincts, historic buildings and historic sites in residential areas.	The proposed new building will be at the rear of the existing house on 403 High Street, and will have very limited impact on the High Street

Policy 8.3.12	Recognise and protect the heritage quality of the City's identified residential buildings and residential townscape precincts, facilitate the continued usefulness of the buildings themselves, and recognise, protect and preserve the heritage contained in the archaeological sites within the City.	Heritage Precinct. There will be no external changes to the house of 402 High Street. The proposal is considered to be consistent with this objective and policy.
Objective 8.2.7	Recognise that some community support activities contribute to the maintenance and enhancement of the residential character and amenity.	The proposal is in respect of an existing community support activity that seeks to change its premises. The activity has been established in this general location for decades with no evidence of anything other than limited adverse effects on the residential area. The proposal is considered to be consistent with this objective and policy.
Policy 8.3.10	Provide for community support activities in residential areas.	

Hazards

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	The proposed earthworks will require supervision and careful management, but provided the CSMP is adhered to, there should be minimal risk to persons and the environment. The proposal is considered to be consistent with this objective and policy.
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Transportation

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	The house of 402 High Street has no existing on-site parking, and none will be provided for the residential activity. Few residents have their own vehicle, and as such, the continuation of the existing situation is considered acceptable. The new development on 403 High Street will utilise an existing crossing place with good visibility in both directions. It will provide at least three on-site parking spaces whereas at present the community support activity has no specific parking provision. The proposal is considered to be consistent with these objectives and policies.
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	

Proposed Plan

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

Strategic Directions

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 2.2.1	The risk to people, communities, and property from natural hazards, and from the potential effects of climate change, is minimised so that the risk is no more than low.	There is no known risk to the property or activity from natural hazards or climate change. The proposal is considered to be consistent with this objective and policy.
Policy 2.2.1.1	Manage land use, development and subdivision based on: <ol style="list-style-type: none"> 1. the sensitivity of activities, by identifying them as: a sensitive activity, a potentially sensitive activity, or a least sensitive activity; 2. the risk from natural hazards to people, communities and property, considering both the likelihood and consequences of natural hazards, as shown in Table 11.1 in Section 11. 	

Transportation

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 6.2.2	Land use activities are accessible by a range of travel methods.	The house of 402 High Street has no on-site parking for residents, and there are limited on-site parking for the community support activity of 403 High Street. The application states that the residents and attendees of the community support activities generally do not have their own vehicles, and the demand for on-site parking is limited. There is parking available at the kerbside, and there is a bus stop immediately outside the subject sites. The proposed activities already have a long standing presence in the neighbourhood, and the scale of activity is not significantly changing with this proposal. The proposal is considered to be consistent with these objectives and policies.
Policy 6.2.2.1	Require land use activities whose parking demand either cannot be met by the public parking supply, or would significantly affect the availability of that supply for surrounding activities to provide car parking either on or near the site at an amount that is adequate to: <ol style="list-style-type: none"> 1. avoid excessive pressure on publicly available parking in the vicinity of the site (including on-street parking and off-street facilities); 2. avoid or, if avoidance is not possible, adequately mitigate adverse effects on the availability of public parking in the vicinity of the site (including on-street parking and off-street facilities); and 3. ensure accessibility for (as relevant) residents, visitors, customers, staff and students who have limited mobility, including disabled people, the elderly and people travelling with young children. 	
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	
Policy 6.2.3.4	Require land use activities to provide the amount of car parking space necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not possible, adequately mitigated.	
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	
Objective	Parking areas, loading areas and vehicle	

6.2.4	<p>accesses are designed and located to:</p> <ol style="list-style-type: none"> 1. provide for the safe and efficient operation of both the parking or loading area and the transport network; 2. facilitate the safe and efficient functioning of the transport network and connectivity for all travel methods. 	<p>driveway and provide three on-site parking spaces for use by the community support activity. There will be adequate on-site manoeuvring space provided so that vehicles can enter and exit forwards onto and off the site. The proposal is considered to be consistent with this objective and these policies.</p>
<p>Policy 6.2.4.1</p>	<p>Require parking and loading areas, including associated manoeuvring and queuing areas, to be designed to ensure:</p> <ol style="list-style-type: none"> 1. the safety of pedestrians travelling on footpaths and travelling through parking areas; 2. that vehicle parking and loading can be carried out safely and efficiently; 3. that any adverse effects on the safe and efficient functioning of the transport network is avoided, or if avoidance is not possible, would be no more than minor; 4. the safe and convenient access to and from parking and loading areas for vehicles, pedestrians and cyclists; and 5. that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. 	
<p>Policy 6.2.4.2</p>	<p>Require all driveways to be designed to ensure:</p> <ol style="list-style-type: none"> 1. the surfacing and gradient of the driveway allows it to be used safely and efficiently; 2. that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths. 3. the width of the driveway is sufficient to allow the type and number of vehicles likely to be using it to do so safely and efficiently; and 4. sufficient distance is provided between shared driveways and dwellings. 	

Public Health and Safety

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Contrary to the Objective?</i>
<p>Objective 9.2.1</p>	<p>Land use, development and subdivision activities maintain or enhance the efficiency and affordability of water supply, wastewater and stormwater public infrastructure.</p>	<p>The Water and Waste Group has noted there is available capacity in the water supply, and stormwater and foul sewer drainage to serve the additional residential unit and the new community support activity, but recommended that water saving devices be provided. The proposal is consistent with this objective and policy.</p>
<p>Policy 9.2.1.1</p>	<p>Only allow land use or subdivision activities that may result in land use or development activities where:</p> <ol style="list-style-type: none"> 1. in an area with water supply and/or wastewater public infrastructure, it will not exceed the current or planned capacity of that public infrastructure or compromise its ability to service any activities permitted within the zone; and 2. in an area without water supply and/or wastewater public infrastructure, it will not lead to future 	

	pressure for unplanned expansion of that public infrastructure.	
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	The relocation of the community support activity from one address to another is considered to maintain peoples' health and safety, both in regard to the persons who are served by the community support activity and the surrounding residents. The proposal is considered to be consistent with this objective and policy.
Policy 9.2.2.1	Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not possible, ensure any adverse effects would be insignificant.	

Natural Hazards

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 11.2.1	The risk from natural hazards, including climate change, is minimised, in the short to long term.	There is no reason to suppose that the proposed new building will be at risk of natural hazards including climate change. The proposal is considered to be consistent with this objective.
Policy 11.2.1.12	In all hazard overlay zones, or in any other area that the DCC has good cause to suspect may be at risk from a natural hazard (including but not limited to a geologically sensitive mapped area (GSA)), only allow earthworks - large scale or subdivision activities where the risk from natural hazards, including on any future land use or development, will be avoided, or no more than low.	The proposal includes some earthworks on 403 High Street, but these are not expected to be at risk of natural hazards. Nevertheless, the earthworks will require supervision to ensure that they are adequately managed and will not cause instability affecting other properties. On the basis of known information, the proposal is considered to be consistent with these policies.

Heritage

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 13.2.1	Scheduled heritage buildings and structures are protected.	The existing scheduled buildings will be retained and reused. The house on 402 High Street will become two residential units, and there are no changes promoted for the existing use of the houses on 401 and 403 High Street. The proposal will not result in any external changes to the buildings. The proposal is considered to be consistent with this objective and policy.
Policy 13.2.1.1	Encourage the maintenance, on-going use and adaptive re-use of scheduled heritage buildings, including by enabling repairs and maintenance, earthquake strengthening, and work required to comply with section 112 (Alterations) and section 115 (Change of Use) of the Building Act 2004 where it is done in line with policies 13.2.1.2-13.2.1.4.	
Objective 13.2.3	The heritage streetscape character of heritage precincts is maintained or enhanced.	The new development of 403 High Street will be situated at the rear of the site, and will be of limited visibility when viewed from High Street. It is noted that the precinct extent is confined to the front sites on High Street, and that sites and buildings to the rear of the houses fronting the road are not usually part of the precinct. The proposed building will not dominate the street, the parking will be to the rear of the house on 403 High Street, and the new building will be of a similar scale to the large houses on this road. The proposal is considered to be consistent with this objective and policy.
Policy 13.2.3.2	Require development within residential heritage precincts to maintain or enhance heritage streetscape character, including by ensuring: <ol style="list-style-type: none"> 1. garages and carports do not dominate the street; 2. off-street car parking is located at the rear of buildings, or where this is not feasible due to the location of the buildings, is set back from the street frontage; 3. building heights, boundary setbacks, and scale reflect heritage streetscape character; 4. network utility structures are appropriately located; and 5. fences do not screen buildings from 	

	view.	
Policy 13.2.3.7	<p>Only allow new buildings and structures that are visible from an adjoining public place, where their design, materials and location ensure the heritage streetscape character of the precinct is maintained or enhanced, including by:</p> <ol style="list-style-type: none"> 1. incorporating into the design the relevant preferred design features and characteristics listed in Appendix A2 and, where possible and appropriate, the relevant suggested features and characteristics; 2. maintaining existing views of scheduled heritage buildings and character-contributing buildings from adjoining public places as far as practicable; and 3. ensuring structures whose design unavoidably conflicts with precinct characteristics are as unobtrusive as possible. 	<p>The new community support building is visible for a short distance when travelling along High Street. The proposed building will maintain the bulk and location requirements except for yards and height planes in respect of 401 High Street (which will not be evident from the street), and the site coverage. The site coverage breach will not be obvious from the street, and will in any case, be largely reflective of the site coverage of the other sites in the immediate location. The proposed building will not interfere with any public views of existing heritage or character-contributing buildings. The proposal is considered to be consistent with this policy.</p>
Objective 13.2.4	Dunedin's archaeological sites are protected from inappropriate development and use.	There are no known archaeological sites on the rear of 403 High Street although the applicant is to contact Heritage New Zealand regarding the bluestone wall of the boundary. This wall is to be retained without modification during the earthworks and development project. The proposal is considered to be consistent with this objective and policy.
Policy 13.2.4.1	Require an archaeological authority to be obtained, if one is required, prior to undertaking earthworks on a scheduled archaeological site.	

Residential zones

	Objective/Policy	Is the proposal Consistent with or Contrary to the Objective?
Objective 15.2.1	Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facilities, and commercial activities that support the day-to-day needs of residents.	The proposal involves re-establishing residential activity in an existing residential dwelling. Although the density of development will breach the District Plan, this will not be evident as the two units will be in the one building, with no external alterations occurring. The community support activity is compatible with the residential activity in this location as it has been established for many years with minimal conflict apparent. The proposal is considered to be consistent with this objective and policy.
Policy 15.2.1.1	Provide for a range of residential and community activities, where the effects of these activities can be managed in line with objectives 15.2.2, 15.2.3, 15.2.4, and 15.2.5 and their policies.	
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents	402 High Street has a backyard with outdoor facilities which will provide adequate on-site amenity for the residents of the two units within the existing building. The proposed building for 403 High Street will occupy the back yard of this property, reducing the amount of open space available for used by the residents of the house on 403 High Street. It does not appear that the back yard is used to any significant extent, and the relationship of 401, 402 and 403 High Street means that the residents have other options for outdoor living. The proposal is considered to be consistent with this objective and policy.
Policy 15.2.2.1	<p>Require residential development to achieve a high quality of on-site amenity by:</p> <ol style="list-style-type: none"> 1. providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, and recreation; 2. having adequate separation distances between residential buildings; 3. retaining adequate open space uncluttered by buildings; and 4. having adequate space available for service areas. 	
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding	While the presence of a building at the rear of 403 High Street will impact on the neighbours,

	residential properties and public spaces.	
Policy 15.2.3.1	Require buildings and structures to be of a height and setback from boundaries that ensures there are no more than minor effects on the sunlight access of current and future residential buildings and their outdoor living spaces.	the proposed structure will more than maintain the yard and height plane angle requirements in respect of the neighbouring sites except for the applicant's own site of 401 High Street. As such, the proposal is considered to be consistent with this objective and policy.
Policy 15.2.3.2	Require working from home, dairies, training and education, and community and leisure - small scale, to operate in a way (including hours of operation), that avoids or, if avoidance is not possible, adequately mitigates, noise or other adverse effects on the amenity of surrounding residential properties.	The community support activity of 403 High Street will be orientated towards the applicant's own site of 401 High Street. Windows can be sensitively positioned within the building itself to minimise interaction with the neighbouring properties. The proposal is considered to be consistent with these policies.
Policy 15.2.3.3	Require buildings and structures in the inner city residential zone to be of a height and setback from boundaries that: <ol style="list-style-type: none"> enables a high quality, medium density form of development that is consistent with the existing streetscape character of the zone; and ensures a reasonable level of outdoor amenity by minimising adverse effects on sunlight access on outdoor spaces at the rear of sites. 	
Objective 15.2.4	Subdivision activities and development maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	There will be two residential units on 402 High Street when only one residential unit is anticipated. Accordingly, the residential density is not that anticipated for the inner city area, but the two units will be established within an existing house that will not change externally in any way.
Policy 15.2.4.1	Require development to maintain or enhance streetscape amenity by ensuring: <ol style="list-style-type: none"> garages, carports and car parking do not dominate the street; there are adequate areas free from buildings or hard surfacing; buildings' height, boundary setbacks, and scale reflect the existing or intended future residential character; shared service areas are not visible from ground level from outside the site; and outdoor storage is managed in a way that does not result in unreasonable visual amenity effects or create nuisance effects. 	The new development of 403 High Street will be to the rear of the site, and will have very limited interaction with the streetscape of High Street. Accordingly, it will maintain the streetscape amenity of High Street. Overall, the proposal is considered to be inconsistent with this objective and these policies.
Policy 15.2.4.2	Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	
Objective 15.2.5	Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: <ol style="list-style-type: none"> visual amenity and character; the stability of land, buildings, and structures; and surrounding properties. 	The proposed earthworks for the development of 403 High Street are necessary for the construction of the proposed building. They will not be significant, and no compromise to the amenity of the area will occur except possibly during the construction phase of the project.
Policy 15.2.5.1	Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by: <ol style="list-style-type: none"> being set back an adequate distance from property boundaries, buildings, 	The earthworks will be set back from adjoining properties, and are not expected to create instability on the subject site or neighbouring sites. The earthworks are to be supervised and designed by a suitably qualified person and are not to commence until building consent for the new building has been issued.

	structures and cliffs; and 2. using a batter gradient that will be stable over time.	The proposal is considered to be consistent with this objective and policy.
Policy 15.2.5.2	Require earthworks and any associated retaining structures to be designed and located to minimise adverse effects on surrounding sites and the wider area, including by: 1. limiting the scale of earthworks that are provided for as a permitted activity; and 2. requiring earthworks to avoid sediment run-off, including onto any property, or into any stormwater pipes, drains, channels or soakage systems.	The building and earthworks have been designed to have minimal adverse effects on the surrounding sites. The earthworks will be limited to those necessary to build the new structure, and will be undertaken in accordance with a soil management plan. The earthworks will be designed and supervised by a suitably qualified person. The proposal is considered to be consistent with these policies.
Policy 15.2.5.3	Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects will be avoided or, if avoidance is not possible, adequately mitigated: 1. adverse effects on visual amenity and character; 2. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and 3. adverse effects on the stability of land, buildings, and structures.	

[157] As the Proposed Plan is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed Plan.

[158] It is my view that the proposal is consistent with the relevant objectives and policies of the Dunedin City District Plan and the Proposed Plan to do with manawhenua, infrastructure and servicing, natural hazards, heritage, residential, and transportation. However, it is inconsistent with those relating to residential density in respect of the two units on 402 High Street.

Assessment of Regional Policy Statement and Plans

[159] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998. It is currently under review and the Proposed Regional Policy Statement was notified on 23 May 2015. The Hearing Panel decisions on the Proposed Regional Policy Statement were released on 1 October 2016. 26 notices of appeal were then received and the parties are now in the mediation period. Any issues not resolved through mediation will become the subject of an Environment Court hearing.

[160] The proposal is considered to be consistent with the relevant objectives and policies of the following chapters of the Regional Policy Statement for Otago: 4: Manawhenua, 5: Land, 9: Built Environment, and 11: Natural Hazards. It is also considered to be consistent with the following relevant objectives and policies of the Proposed Regional Policy Statement:

- Objective 1.1: Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.
- Policy 1.1.2: Economic wellbeing.
- Policy 1.1.3 Social and cultural wellbeing and health and safety.
- Objective 4.3: Infrastructure is managed and developed in a sustainable way.

- Policy 4.3.1: Managing infrastructure activities.
- Objective 5.2 Historic heritage resources are recognised and contribute to the region's character and sense of identity.
- Policy 5.2.1: Recognising historic heritage.
- Policy 5.2.2 Identifying historic heritage.
- Policy 5.2.3: Managing historic heritage.

7. DECISION MAKING FRAMEWORK

Part II Matters

- [161] Given there is no ambiguity, incompleteness or illegality in the operative Dunedin City District Plan, it may not be necessary to go back to Part II Matters of the Resource Management Act 1991; however, I have undertaken an assessment of Part II below, and in my opinion, there is inconsistency or a degree of conflict with Part II stemming from the proposed development of the Rural-zoned land.
- [162] Consideration is given to the ability of the proposal to meet the purpose of the Act, which is to promote sustainable management of natural and physical resources. Other resource management issues require consideration when exercising functions under the Act. The relevant sections are:
- 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment";
 - 6(f) "The protection of historic heritage from inappropriate subdivision, use and development";
 - 7(b) "The efficient use and development of natural and physical resources";
 - 7(c) "The maintenance and enhancement of amenity values";
 - 7(f) "Maintenance and enhancement of the quality of the environment"; and
 - 7(g) "Any finite characteristics of natural and physical resources".
- [163] With regards to section 5(2)(c), it is considered that the residential and community support activities at this location will have minimal adverse effects on the surrounding neighbourhood. The community support activity has already operated from this location for a number of decades and it is just the facilities that are changing. The residential activity will occur in an existing residential building.
- [164] With regard to section 6(f), it is considered that the proposed use of the existing houses and the development of a new building to the rear of 403 High Street will have no impact on the historic heritage of the subject sites and the High Street Heritage Precinct.
- [165] With regard to Section 7(b), it is considered that the proposed development of 403 High Street will utilise an area of underutilised ground for an activity that is already operating from this area. The use of the back yard and the existing houses of 401, 402 and 403 for residential and community support activities is efficient use of the existing large housing and land resource at this location.
- [166] With regard to Section 7(c), it is considered that the continuation of the community support activity in a custom-built building will maintain the amenity values of the area. The new building will be constructed so as to minimise the interaction of the community support activity on 403 High Street and the immediate neighbours.
- [167] With regard to Section 7(f), it is considered that the retention and reuse of the existing housing, and the construction of a new building on an underutilised back yard will maintain the quality of the environment and be consistent with the level of development anticipated for an inner city residential area.

[168] With regard to Section 7(g), it is considered that the land and building resources of the inner city residential area are a finite resource. The proposal will keep the existing built environment and will utilise an area of currently underutilised land resource.

Section 104

[169] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. Section 5.0 of this report assessed the environmental effects of the proposed development and concluded that the effects on the environment of the residential activity in 402 High Street and the community support activity of 401 and 403 High Street will have less than minor effects.

[170] Section 104(1)(b) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. Section 6.0 concluded that the proposal is consistent with the great majority of the relevant objectives and policies, and only inconsistent with the objective regarding the density of residential activity.

[171] Section 104(1)(b) requires the Council to have regard to any relevant regional policy statement or regional plan. In paragraphs [159] and [160] of this report it was concluded that the application is consistent with the bulk of the relevant objectives and policies of the Regional Policy Statement for Otago.

[172] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the Plans by the Council is a desired outcome for consents.

True exception (s104(1)(c))

[173] Another matter relevant to the Committee is the consistent administration and interpretation of the District Plan. Further, the application is a non-complying activity and case law gives guidance as to how non-complying activities should be assessed in this regard.

[174] Early case law from the Planning Tribunal reinforces the relevance of considering District Plan integrity and maintaining public confidence in the document. In *Batchelor v Tauranga District Council* [1992] 2 NZLR 84, (1992) 1A ELRNZ 100, (1992) 1 NZRMA 266 the then Planning Tribunal made the following comments:

"...a precedent effect could arise if consent were granted to a non-complying activity which lacks an evident unusual quality, so that allowing the activity could affect public confidence in consistent administration of the plan, or could affect the coherence of the plan."

[175] In *Gardner v Tasman District Council* [1994] NZRMA 513, the Planning Tribunal accepted that challenges to the integrity of a district plan could be considered as an 'other matter' (under what was then section 104(1)(i) and what is now section 104(1)(c) of the Resource Management Act 1991), rather than as an effect on the environment. The Planning Tribunal in that case also said:

"If the granting of one consent was likely to cause a proliferation of like consents and if the ultimate result would be destructive of the physical resources and of people and communities by reason of causing unnecessary loadings on services or perhaps by reason of causing under-utilisation of areas where services etc. have been provided to accommodate such activities, then the Council may well be able to refuse an application having regard to that potential cumulative effect."

[176] These matters have been considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC* (C92/2003) has demonstrated that

when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council will apply the 'true exception test'.

[177] In paragraph 11 of the decision Judge Smith stated "... we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique." This was added to in paragraph 20 where the Judge stated, "... therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone."

[178] More recently, the matter of Plan integrity was considered in the Environment Court case *Berry v Gisborne District Council* (C71/2010), which offered the following comment:

"Only in the clearest of cases, involving an irreconcilable clash with the important provisions, when read overall, of the Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined."

[179] The Committee should consider the relevance of maintaining the integrity of the District Plan and whether there is a threat posed by the current proposal in this regard. If the Committee deems there to be a real threat from this type of proposal being approved, it would be prudent to consider applying the 'true exception' test to determine whether a perception of an undesirable precedent being set can be avoided. However, *Mason Heights Property Trust v Auckland Council* (C175/2011) noted that the true exception test is not mandatory:

"The Court has frequently looked at whether the proposal constitutes a true exception to the Plan. This test is not mandatory, but can assist the Court in assessing whether issues of precedent are likely to arise and whether the proposal meets the objectives and policies of the Plan by an alternative method."

[180] The community support activity of 401 and 403 High Street is a discretionary activity which does not need to meet any true exception test. The District Plan anticipates such activities in the residential zones, but allows the Council to consider all matters of the activity during the assessment for resource consent. This proposal is a non-complying activity purely because of the second residential unit within 402 High Street.

[181] The subject building of 402 High Street is a historic home, two-storeys high, and very substantial in size and presence on the street frontage. There is already a residential unit on the upper floor of the building, and this proposal seeks to establish a second on the ground floor once it is vacated by the present community support activity operating out of this space. Very few residential buildings house community support activities, and in this respect, the subject building on 402 High Street is unusual. The exchange of residential activity for a community support activity will have similar or lesser effects, and is unlikely to be noticeable to anyone external to the building. I consider that the reuse of the existing house after the community support activity is relocated is an unusual situation, and can be granted consent without the risk of setting an undesirable precedent where other property owners could reasonably expect to establish multiple units within a historic house at a density not supported by the District Plan.

Non complying status (s104D)

- [182] Section 104D of the Act establishes a test whereby a proposal must be able to pass through at least one of two gateways. The test requires that effects are no more than minor or the proposal is not contrary to the relevant objectives and policies.
- [183] It is my opinion that the re-use of the ground floor of 402 High Street will have adverse effects on the surrounding area which are no more than minor. I also consider that the proposal is consistent with the bulk of the objectives and policies, and only inconsistent with those concerned with density of development. Taking into consideration the establishment of the community support activity on 403 High Street as well, the proposal is still considered to have less than minor effects, and to be consistent with the relevant objectives and policies of both Plans. Overall, I consider that the proposal will meet both tests of section 104D, and the Committee is able to consider the granting of consent.

8. RECOMMENDATIONLand Use LUC-2017-418

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, the District Plan, and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES"), the Dunedin City Council **grants** consent to a **non-complying** activity being:*

- *the second residential unit in the existing house of 402 High Street (CFR OT368/120);*
- *earthworks and the disturbance of soils (NES) on 403 High Street (CFR OT276/233);*
- *the establishment of a community support activity in a new building on 403 High Street (CFR OT276/233);*
- *and the existing community support activity of 401 High Street (CFR OT14C/712),*

subject to conditions pursuant to section 108 of the Act, as shown on the attached certificate.

I have recommended conditions for consent as Appendix 1 of this report.

9. REASONS FOR RECOMMENDATION

1. It is my opinion that any actual or potential adverse effects on the environment from the establishment of community support activity in a new building on 403 High Street, and the second residential unit in the existing house of 401 High Street, will be no more than minor for the following reasons:
 - a) The new building will be at the rear of 403 High Street, and will not be easily seen from High Street. It will have many similarities in scale to a large house including the existing house on the same site. The proposed building will have no adverse effects on the streetscape of High Street.
 - b) The proposed building will maintain the yard and height plane angles in respect of the neighbouring properties at 409 High Street and 167 Maitland Street. The new building is likely to be very noticeable from these neighbouring addresses simply because the backyard of 403 High Street is currently open ground, but the District Plan anticipates development for this ground in the position which maintains the bulk and location requirements of the District Plan. The yard and height plane angle breaches exhibited by this proposed building are all in respect of the applicant's own property of 401 High Street, and by placing the building closer to this side boundary that the District Plan allows, the applicant is improving the situation for the other neighbours.

- c) The District Plan seeks to provide access to sunlight by specifying minimum yards and maximum height plane angles. As noted above, the proposed building of 403 High Street will maintain these requirements in respect of the external neighbours. The shading effects on the neighbours from the proposed building will be the same or better than a permitted structure. The shading is expected to be greater than at present, simply because there is no building at all on this part of the site currently, but may not be as bad as the neighbours anticipate once present shading is considered.
- d) The site coverage breach for 403 High Street resulting from the construction of the new building is actually consistent with the site coverages of the neighbouring properties overall. The site, at its present 19% site coverage, is the least developed of all the properties surrounding 403 High Street. The site coverage breach is therefore unlikely to change the character of the residential area significantly. Furthermore, the open space to be covered by the proposed building is at the rear of 403 High Street where it is not easily seen from High Street itself. It is not the applicant's responsibility to provide open space amenity for neighbouring properties.
- e) The proposed building, and the reuse of the ground floor of the house of 402 High Street, will have no adverse effects on the heritage precinct or any of the scheduled buildings along this road. The building will be to the rear of the house on 403 High Street, and will be difficult to see from High Street except over a short distance. There will be no alterations to any of the scheduled buildings. As such, there will be no impact on the precinctual values of High Street.
- f) The community support activity is well established at this location although not specifically on 403 High Street. The residents of 403 High Street are, however, closely associated with the community support activity and the three subject sites work more or less as a unit. While the transfer of the community support activity from 402 High Street to the rear of 403 High Street will place the hub of the activity in a different location, thereby bringing it closer to the neighbours of 409 High Street and 167 Maitland Street, the impact on the character and activity along High Street is likely to be unnoticeable.
- g) The community support activity of 402 High Street has no on-site parking provision. The transference of this activity to 403 High Street will create three on-site parks associated with the community support activity, therefore improving the situation for parking demand on the street. The scale of the community support activity of Moana House is not anticipated to increase as a result of this proposal. Currently, the combined activities of 401, 402 and 403 High Street do not appear to be creating a great demand for kerbside parking beyond that typically expected for an inner city location, and the proposal is not expected to worsen the existing situation given that Moana House discourages residents and attendees from having private vehicles.
- h) The development of 403 High Street will involve earthworks. These are an expected component of any development proposal and the undertaking of earthworks is not unusual for a residential area during a construction phase of a project. Earthworks are also a temporary issue. The earthworks of this proposal are to be designed and supervised by a suitably qualified person. It is not in the applicant's best interests to cause instability on the subject sites or neighbouring properties, and the earthworks are to be managed in accordance with best practice guidelines.
- i) Soil testing indicates that there is contamination of fill on 403 High Street. The applicant will be required to manage the soil disturbance during the construction period in accordance with the Contaminated Soils Management Plan prepared specifically for this situation. The proposal will remove contaminated soils from

the subject site, and will result in most or all of any contaminated soils remaining being covered by building or hard surfacing. The contaminated status of the site and the risk to persons is therefore expected to improve with the proposed development.

- j) The establishment of a second residential unit within the house of 402 High Street will have no external effects given that there will be no changes to the exterior of the house. Furthermore, the residential unit will replace offices and meeting rooms associated with the community support activity; the residential activity is not expected to generate additional comings and goings from the building to what is already likely to be happening. Overall, residential activity is an expected component of the Residential 1 zone, and it is the density of that residential activity which breaches the District Plan in this case. A single residential unit with the same number of bedrooms would have similar effects to the proposed two units, particularly as this house is not used as a family home but rather is more of a hostel or flatting situation. As such, the difference in activity is essentially a second kitchen.
 - k) The present community support activity of 401 High Street might not be lawfully established but is a well-established and apparently low impact activity at this address. The granting of consent for the community support activity of 401 High Street, at the scale currently in place, is not considered to have any adverse effects on the surrounding environment which are minor or more than minor.
2. The existing community support activity at this location is a true exception. It has been in place for several decades, is deliberately low-key in operation, and has an existing consent to operate from 402 High Street. The rearrangement of the community support activity between 401, 402 and 403 High Street, and the reestablishment of residential activity in the existing house of 402 High Street, is not expected to create any undesirable precedent or challenge to the District Plan.
 3. The proposal is consistent with the majority of the relevant objectives and policies of both Plans, and only inconsistent with those to do with residential density.
 4. Overall, it is considered that the proposal meets both branches of the Section 104D test of the Act. Accordingly, the Committee is able to consider granting consent.

Report prepared by:

Report checked by:



Lianne Darby
Planner



Campbell Thomson
Senior Planner

15.12.2017

Date

15/12/17

Date

Should the Committee be of a mind to grant consent, I recommend the following conditions for consent:

DRAFT RECOMMENDED CONDITIONS: Subject to change.

LUC-2017-418

1. *The proposal shall be given effect to generally in accordance with the plans and elevations prepared by Warnock Architecture Ltd entitled, 'Proposed New Whare for Downie Stewart Foundation 403 Moana Housenedin,' and the accompanying information submitted as part of LUC-2017-418 received by Council on 22 August 2017, except where modified by the following:*

Pre-earthworks or construction:

2. *All earthworks shall be designed and supervised by an appropriately qualified person. Before any construction works commence, the consent holder shall provide a letter to Council advising who the supervisor shall be for the design and supervision of the earthworks. Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer shall confirm in writing to Council that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties. Likewise, the earthworks and subsequent development of 403 High Street is not to compromise the stability of the unsupported bank on 167 Maitland Street.*
3. *A Contaminated Soils Management Plan (CSMP) specifically for the development period of 403 High Street must be prepared by a suitably qualified person and be submitted to Council for approval prior to any earthworks commencing on the subject site. The CSMP must include details such as the contact details of the Site Manager, Health and Safety Officer, the Suitably Qualified Experience Person responsible for design and management of the works, Downie Stewart, and emergency contact details, as well as any other site specific details for this project.*
4. *A Stormwater Management Plan (SWMP) prepared by an authorised/certified hydraulic/hydrological engineer must be submitted to the Development Engineer, Water and Waste Group for approval prior to any construction commencing, and will need to discuss the following:*
 - a) *An assessment of the current and proposed imperviousness of 403 High Street;*
 - b) *Detail of proposed stormwater management systems for the development to accommodate for any excess runoff from extra impervious surfaces;*
 - c) *Stormwater calculations which state the difference between the pre-development flows and post-development flows and how to manage any difference in flow;*
 - d) *Secondary flow paths; and*
 - e) *An assessment of the current network and its ability to accept any additional flow from the proposed development.*
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.*

Site Works:

6. *No earthworks may be undertaken until building consent has been granted for the subject building or any necessary retaining structures.*

7. *All earthworks and disposal of soils must be undertaken in accordance with the approved CSMP of condition 3 above, and the conditions and recommendations of the GeoSolve Ltd report submitted with the application for LUC-2017-418.*
8. *The consent holder shall adopt all practicable measures to mitigate erosion and to control and contain sediment-laden stormwater run-off into the Council stormwater network from the site during any stages of site disturbance associated with this development.*
9. *Sediment fencing shall be utilised to catch all sediment runoff from the area of the proposed earthworks. This fencing shall remain in place until all exposed surfaces are in an erosion-proof state.*
10. *The earthworks shall be undertaken with the principles of industry best practice applied at all stages of site development including site stability, stormwater management, traffic management, along with dust and noise controls at the sites.*
11. *The cartage of any excavated soil from the site must be to a landfill authorised to accept potentially contaminated material. The consent holder shall advise any contractor accordingly. The contractor shall be responsible for keeping the roads clean of material.*
12. *Any earth fill over 0.6m thick supporting foundations shall be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*
13. *Slopes may not be cut steeper than 1h:1v (45°) without specific engineering design and construction.*
14. *Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.*
15. *Any areas of certified or uncertified fill shall be identified on a plan, and the plan and certificates submitted to Council to be recorded against the property file.*
16. *Earthfill shall not impede the egress of water from the property via secondary flow paths. There shall be no displacement of stormwater from flow paths into neighbouring properties.*
17. *No soil disturbance or soil shifting, unloading, loading will take place if wind speed is higher than 14m/s if the soil is dry and prone to becoming airborne, unless a dust suppressant is applied.*
18. *All loading and unloading of trucks with excavation or fill material shall be carried out within the subject site.*
19. *The consent holder shall:*
 - 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.*
16. *Should the consent holder cease, abandon, or stop work on site for a period longer than 6 weeks, the consent holder shall first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions, and shall thereafter maintain these measures for so long as necessary to prevent sediment*

discharge or dust emission from the site. All such measures shall be of a type and to a standard which are to the satisfaction of the Resource Consent Manager.

17. If at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures that 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, shall be reinstated to the satisfaction of Council at the expense of the consent holder.
18. All construction noise shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999.

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

No construction works shall occur on Sundays or public holidays.

19. 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 should, 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 shall 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 should be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work should 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 should 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, should make an application for an Archaeological Authority pursuant to the Heritage New Zealand Act 2014; and
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work should recommence following consultation with the Consent Authority.

20. *Unless covered by hard surfacing, the sites shall be sown with grass immediately following completion of construction works and made erosion resistant within one month of completing construction works.*
21. *At the completion of any and all development works, the rear of 403 High Street must be covered by hard surfacing (buildings, decking, paving, driveway) or soft cover (0.15m layer of clean soil, gravel, chip or bark with a defined break layer) in order to manage the exposure of potentially contaminated soils on an on-going basis.*
22. *On completion of any and all site development works, a report prepared by a suitably qualified person must be submitted to the Council to confirm that all development works have been undertaken in accordance with the Contaminated Soils Management Plan, the required capping under Condition 21 has been installed or maintained, and the finished development complies with all of the requirements of Conditions 5 to 21.*

Services

23. *An 'Application for Disconnection of a Water or Sewer Connection' must be submitted to the Dunedin City Council Water and Waste Group to cut and plug the existing water connection to the 125mm water pipe in High Street which services the existing building of 403 High Street.*
24. *An 'Application for Water Supply' must be submitted to the Water and Waste Group for approval to establish a new 25mm water connection to 403 High Street.*
25. *The new water connection at 403 High Street must have a water meter installed.*
26. *A RPZ boundary backflow prevention device must be installed on the new 25mm water connection for 403 High Street, to the satisfaction of the Dunedin City Council Water Bylaw Compliance Officer.*
27. *Stormwater management must be undertaken in accordance with the approved Stormwater Management Plan of condition 4 above.*
28. *The consent holder must implement water saving devices including, but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixes.*

Community Support Activity

29. *The community support activity of 401 High Street must be confined to minor administration and existing community and residential programmes.*
30. *RMA-2003-357375, for the community support activity of 402 High Street, must be surrendered to the Council at the time of establishing the community support activity within the new building on 403 High Street.*
31. *The predominant pedestrian access to the community support activity building on 403 High Street must be via 401 High Street or via a path between the houses of 401 and 403 High Street (i.e. minimal pedestrian traffic is to occur over the driveway to 403 High Street).*
32. *The on-site parking of 403 High Street must be confined to the residents of 403 High Street and/or staff parking for the community support activity.*
33. *There shall be no windows on the southern or eastern sides of the building, or alternatively, any windows on the southern and/or eastern end of the building must be positioned so as to restrict views down onto neighbouring properties.*

34. *Water saving devices within the new building on 403 High Street must be installed so as to limit water usage.*