
TO: Hearings Committee

FROM: Emma Spalding, Consultant Planner

DATE: 27 May 2019

SUBJECT: **RESOURCE CONSENT APPLICATION
LUC-2019-555
15 RUSSELL STREET, DUNEDIN
DUNEDIN RESIDENTIAL DEVELOPMENTS LTD**

INTRODUCTION

- [1] My name is Emma Jane Spalding. I am employed by 4Sight Consulting Limited in Dunedin as a Senior Planning and Policy Consultant.
- [2] I hold the Degree of Master of Regional and Resource Planning from Otago University and am an Intermediate Member of the New Zealand Planning Institute. I have over ten years of professional experience in the field of Resource Management Planning and am responsible for the provision of consulting services in resource management and planning to a range of public and private clients including territorial authorities.
- [3] Since January 2019 I have provided consultant planning assistance to the Dunedin City Council processing resource consent applications of varying scale and complexity.
- [4] In preparing this evidence I have read and had regard to the following:
- (a) The application and associated appendices;
 - (b) The relevant provisions of the Operative Dunedin City District Plan (Operative Plan), the Proposed Dunedin City District Plan (Proposed 2GP), the Operative Otago Regional Policy Statement (OORPS), and the Partially Operative Otago Regional Policy Statement 2019 (PORPS); and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES Contamination).
- [5] I have visited the site and surrounding area. I became the processing planner for the current application following notification.
- [6] While this is a Council Hearing, I have read the Environment Court's Code of Conduct and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise, or I have stated where I am relying on the evidence of another expert.

- [7] The data, information, facts and assumptions I have considered in forming my opinions are set out in the report. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.
- [8] This report has been written in accordance with Section 42A of the Resource Management Act 1991 (RMA or Act) and has been prepared on the basis of information available in the application lodged on 26 November 2018. 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 RMA before reaching a decision.

SUMMARY OF RECOMMENDATION

- [9] For the reasons set out in paragraphs 161 to 163 below, I consider that the proposal will have minor adverse effects on the environment, and will be consistent with the relevant objectives and policies contained within the Operative District Plan and the Proposed 2GP. The proposal is also consistent with the objectives and policies within the Regional Policy Statement for Otago 1998, and the Partially Operative Regional Policy Statement for Otago 2019. As a result, I have concluded that the proposal should be granted.

DESCRIPTION OF PROPOSAL

- [10] Resource consent is sought to construct a residential dwelling on the subject site.
- [11] The proposed dwelling is designed over three levels (including basement carport/storage) and has a gross floor area of approximately 248m² (excluding carport) and maximum height above ground level of approximately 8.9m. Parts of the dwelling are proposed to be located within the required 1m yards and there will be some breaches of the required height plane angle in relation to boundaries.
- [12] The proposal will involve earthworks and construction of retaining walls. The excavation will result in cuts of up to 3m in depth and will remove approximately 171 cubic metres (m³) of soil to form the basement level of the dwelling. The proposed earthworks will be within 1m of the northern site boundary and within 1.5m of the northwest site boundary.
- [13] The proposed dwelling will have vehicle access from Arthur Street, via the rights of way outlined below. The establishment of vehicle access from Russell Street is not proposed at this time.
- [14] A copy of the application, including plans of the proposed dwelling, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [15] The subject site is a rear site, located in the centre of a triangle formed by Arthur Street, Russell Street and Canongate. The site is an unusual, narrow shape, with a right of way via Russell Street, although as discussed above, the site will gain vehicle access from Arthur Street, via several easements. It is a relatively steep site, with a cross fall of approximately 3m from the north-west corner to the south-east, and an

average slope of 16°. The site is currently vacant and contains a range of trees and scrub.

- [16] The surrounding environment is predominantly residential. The site is within a Heritage Precinct Overlay Zone, and many of the surrounding houses on Russell Street are identified as 'character contributing buildings' in Appendix A1.1 of the Proposed 2GP.
- [17] The subject site is legally described as Lot 3 Deposited Plan 16212, (held in Computer Freehold Register OT7B/881). It has an area of 559m² and there are several encumbrances registered against the property. Easements for rights of way to which the property is subject are as follows:
- Right of way in favour of Lot 1 DP 16212 (19 Russell Street) created by transfer 486317.2;
 - Right of way in favour of Lot 2 DP 16212 (23 Russell Street) created by transfer 683134.2; and
 - Right of way in favour of Lot 5 DP 16212 (104 Canongate) created by transfer 683134.4.
- [18] These easements will continue to be provided for as part of the proposed development. It is noted that the plans originally submitted with the application proposed the partial obstruction of the right of way in favour of 19 Russell Street. However, in a response to a request for further information provided on 30 October 2018, the applicant revised the design to remove the portion of the building from the right of way, and this matter is now resolved.
- [19] The subject site is also appurtenant to a number of easements for the drainage of foul sewage and stormwater, and rights of way for access to the site. As such, legal access is available via rights of way over 109 Arthur Street (Lots 1 & 2 DP 20064), 111/108B Canongate (Lot 4 DP 16212), and 103 Arthur Street (Sec 9 Blk X Tn of Dunedin).

ACTIVITY STATUS

- [20] Dunedin currently has two district plans: the Operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [21] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Act. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application. It is noted that the application was lodged before the Proposed 2GP decisions were issued, when no Proposed 2GP rules were in effect. However, in the interim, decisions were notified on 7 November 2018. The appeal period closed on 19 December 2018.
- [22] Many of the rules in the Proposed 2GP can now be considered to be operative, in accordance with section 86F of the Act, which states that a rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making lodging appeals on the rule has expired and no appeals have been lodged in

relation to the rule. However, in this case, the Inner City Residential zone is subject to appeal, and as such, all relevant provisions may be subject to change and cannot be deemed operative.

Dunedin City Operative District Plan (Operative Plan)

[23] The subject site is zoned Residential 4 in the Operative Plan. Russell Street is classified as a Local Road, and Arthur Street as a Collector Road, in the Plan's Roding Hierarchy. There are no hazards identified for this property or adjacent properties within the Hazard Register.

[24] The proposed development requires resource consent for the following reasons (including further reasons than those identified in the application):

[25] The definition of Residential Activity within the District Plan means:

"... the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papakaika housing if these are in the form of residential units..."

[26] The definition of Residential Unit within the District Plan means:

"... a building or part of a building which is self contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents..."

[27] The proposal is considered to fall within the definition of Residential Activity and Residential Unit. Resource consent is required as the proposal does not meet the following rules in the District Plan:

[28] The proposed dwelling does not comply with Rule 8.10.2(ii) Height Plane Angle, which requires a 72° height plane angle. In this case, the proposed dwelling breaches the height plane angle as follows:

- Breaches the height plane angle to the northern boundaries along the length of the roofline on the northern side of the dwelling. The extent of the breach varies along the boundary line and is greatest where three bays of roofing/angled walls extend into the required side yard. The maximum breach is at the dining room bay, and is up to approximately 5.6m vertically.
- Breaches the height plane angle to the southern boundaries in two locations. The breach at the first-floor deck is up to 1.5m vertically and the breach at dining room corner of the dwelling is up to 5.3m vertically.
- Breaches the height plane angle to the eastern boundary in two locations. The breach at the southeast corner of the stairwell is up to 6.2m vertically and the breach at the canopy over the front door entrance is up to approximately 1.8m vertically.

[29] As such, resource consent is required for a **restricted discretionary activity**, pursuant to Rule 8.10.4. Council's discretion is restricted to the matter not complied with.

- [30] The proposed dwelling does not comply with Rule 8.10.2(i)(b) Minimum Yards for Rear Sites, which requires minimum yards of 1m to all boundaries. In this case, breaches of the yards are proposed in six locations. These breaches all occur in the location of bays of roofing/angled walls around the dwelling. The breaches are as follows:
- Breach of the northern yard by the dining room bay up to the full depth of the yard (1m);
 - Breach of the northern yard by the living room bay and by the snug bay of approximately 0.6m each;
 - Breach of the eastern yard by the stairwell bay of up to approximately 0.7m;
 - Breach of the eastern yard by the entry canopy of up to approximately 0.4m; and
 - Technical breach of the northwest yard by the master bedroom bay.
- [31] As such, resource consent is required for a **restricted discretionary activity**, pursuant to Rule 8.10.4. Council's discretion is restricted to the matter not complied with.
- [32] The proposed residential activity does not comply with Rule 8.10.2(v) Minimum Amenity Open Space and Rule 8.6.2(i) Amenity Open Space, as there is no area at ground level which is not used for car parking, vehicle manoeuvring, driveways or access to other sites which is a minimum of 35m² in area and capable of containing a circle of 4.5m diameter. As such, resource consent is required for a **restricted discretionary activity**, pursuant to Rule 8.10.4. Council's discretion is restricted to the matter not complied with.
- [33] The proposed earthworks do not comply with Rule 17.7.3(i)(c)(ii) Minimum Setback Distance, with respect to the distance of cut from the property boundary. In this case, cut supported by retaining walls for which building consent has not yet been granted will be constructed to form the basement level of the dwelling. They will breach the required setbacks as follows:
- Retaining walls up to approximately 3.0m in height at the northern wall of the basement, located up to 1m from the site boundary; and
 - Retaining up to approximately 2.6m in height at the northwest wall of the basement, located up to 1.5m from the site boundary.
- [34] As such, proposal requires consent for a **controlled activity** pursuant to Rule 17.7.4(ii). Council's control is reserved in respect of:
- (a) *Design and engineering of retaining structures and earthworks;*
 - (b) *Effects on the stability of land and buildings;*
 - (c) *Effects on the surface flow of water and on flood risk;*
 - (d) *Effects on underground utilities.*
- [35] The proposed earthworks do not comply with either Rule 17.7.3(ii) Scale Thresholds or Rule 17.7.4(iii). In this case, earthworks of 171m³ in volume and up to 3m in depth are proposed, compared to the permitted activity scale thresholds of 100m³ and 1.5m in depth, and the controlled activity scale thresholds of 250m³ and 2m depth. As such, resource consent is required for a **restricted discretionary activity**, pursuant to Rule 17.7.5 (ii). Council's discretion is restricted to the following matters:

- (a) *Adverse effects on the amenity of 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.*

As the earthworks were not granted an earthworks permit prior to 1 July 2010 and do not form part of a project that was granted building consent on or after 1 July 2010, the Council's discretion also extends to the following matters:

- (g) *Design and engineering of retaining structures and earthworks.*
- (h) *Effects on the stability of land and buildings.*
- (i) *Effects on the surface flow of water and on flood risk.*
- (j) *Effects on underground utilities.*

Proposed Second Generation Dunedin City District Plan (Proposed 2GP)

[36] The Proposed 2GP zoning maps indicate that it is proposed that the subject site be zoned as Inner City Residential. The maps also indicate that the property is subject to an Archaeological Alert Layer, and is within the Heritage Precinct Overlay Zone (City Rise Residential Heritage Precinct).

[37] The reasons for consent under the Proposed 2GP are as follows (including further reasons than those identified in the application):

[38] The proposed activity involves construction of a residential building. The definition of 'Residential Building' is as follows:

"A building that is, or will be, used entirely or in part, for residential activity and contains one or more residential units ..."

[39] The proposal involves construction of a residential building, which will contain one four-bedroom residential unit. Residential activity is a permitted activity, subject to performance standards, as set out in Rule 15.3.3. The proposal does not meet the performance standards relating to minimum area of outdoor living space and quality and location of outdoor living space for residential activities. In accordance with Rules 15.5.11.1 and 15.5.11.3, consent is required for a **restricted discretionary activity**. In accordance with Rule 15.10.3, Council's discretion is limited to effects on onsite amenity for residents.

[40] The proposal will require consent under Rule 15.3.4, as it does not meet the development performance standards for buildings relating to boundary setbacks.

- Breach of the northern yard boundary (with the right of way) by the entrance of 1m;
- Breach of the northern yard by the dining room bay of approximately 0.9m;
- Breach of the northern yard by the living room bay and by the snug bay of approximately 0.6m each;
- Breach of the eastern yard by the stairwell bay of up to approximately 0.7m;

- Breach of the eastern yard by the entry canopy of up to approximately 0.4m; and
- Technical breach of the northwest yard by the master bedroom bay.

[41] As such, the proposal requires consent as a **restricted discretionary activity**, in accordance with Rule 15.6.13.1. Council's discretion is limited to effects on surrounding sites' residential amenity, and effects on neighbourhood residential character and amenity, in accordance with Rule 15.10.4.1.

[42] The proposal will require consent under Rule 15.3.4, as it does not meet the development performance standards for buildings, relating to height in relation to boundary. Rule 15.6.6.1 (a)(ii) relates to the Inner City Residential Zone. Where parts of the site are less than 16m wide, or have a slope angle of 6 degrees or more and where the ground level at the nearest boundary is lower than the existing ground level of the building platform, a plane raising at an angle of 55 degrees from a point 3m above ground level at the boundary should be used. The proposed building has the following breaches to this rule:

- Breaches the height plane angle to the northern boundary along the length of the roofline on the northern side of the dwelling (up to the point where the site is more than 16m wide). The extent of the breach varies along the boundary line and is greatest where the bays of roofing/angled walls extend into the required side yard. The maximum extent of the breach is at the dining room bay, and is up to approximately 2.3m vertically.
- Breaches the height plane angle to the southern boundary in two locations. The breach at the first-floor deck is up to 1.5m vertically and the breach at dining room corner of the dwelling is up to 4.4m vertically.
- Breaches the height plane angle to the eastern boundary in two locations. The breach at the southeast corner of the stairwell is up to 4.7m vertically and there is a technical breach at the canopy over the front door entrance.

[43] In other parts of the site, a plane rising at an angle of 45 degrees measured from a point 3m above ground level at the boundary should be used. The proposal breaches the height plane angle to the northern boundary at the window seat/snug bay for a height of 1.4m reducing to 1.07m over a length of 5m.

[44] As such, the proposal requires consent for a **restricted discretionary activity** (Rule subject to appeal). Matters for discretion are the same as the above.

[45] The proposal will require consent under Rule 15.3.4, as it does not meet the performance standards relating to maximum height. The parts of the building within the required setbacks from the boundaries have heights greater than 2m, and require consent as a **restricted discretionary activity**, in accordance with Rule 15.6.6.2. (Rule not subject to appeal). Matters for discretion are the same as the above.

[46] The proposed building will require consent under Rule 15.3.4 for new buildings in a residential heritage precinct that are visible from an adjoining public place. In accordance with Rule 15.3.4, consent is required for a **restricted discretionary activity**. (Rule not subject to appeal). The matters of discretion are contained in 13.6.4.1, and are limited to effects on heritage streetscape character. It is noted that the guidance on the assessment of resource consents is subject to appeal.

- [47] The proposed earthworks do not comply with the provisions in Rule 8A.5.1.3 (maximum change in ground levels) or 8A.5.1.5 (maximum volume of combined cut and fill). In accordance with Rule 8A.3, large scale earthworks require consent for a **restricted discretionary activity** (Rule subject to appeal). In accordance with Rule 8A.7.2, Council's discretion is limited to effects on visual amenity and amenity of surrounding properties, and effects on the stability of land, buildings, and structures.
- [48] The proposed retaining walls do not comply with the earthworks performance standards in Rule 8A.5.4.1(b) (setback from property boundaries). The retaining walls will support a maximum cut of 3m, and will be located 1.5m from the northern boundary. In accordance with Rule 8A.5.4, consent is required for a **restricted discretionary activity** (Rule subject to appeal). In accordance with Rule 8A.6.3.2, Council's discretion is restricted to effects on the stability of land, buildings and structures. The retaining walls will not be visible from a public place, and do not require consent under Rule 15.3.4.18.

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

- [49] 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.
- [50] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

Overall Status

- [51] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.
- [52] In this case, there is more than one rule involved, and the effects are linked. As a result, having regard to the most restrictive activity classification, the proposal is considered to be a **restricted discretionary activity**.

NOTIFICATION AND SUBMISSIONS

- [53] In accordance with Section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person. No written approvals were submitted with the application.

- [54] After initial consideration of the application, it was considered that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.
- [55] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties at 19 Russell Street, and 102 Canongate due to the potential dominance, privacy and shading effects. The written affected party approval of these parties was not obtained and the application was, therefore, notified on a limited basis on 12 February 2019.
- [56] Copies of the application were sent to the following parties, with submissions closing on 13 March 2019:
- David and Marie Ilian (Owners of 19 Russell Street)
 - Occupiers of 19 Russell Street
 - Occupiers of 19D Russell Street
 - Shuhan Zhang (Owner of 102 and 102B Canongate)
 - Occupiers of 102 Canongate
 - Occupiers of 102B Canongate
- [57] One submission was received by the close of the submission period, and was opposed to the application.
- [58] It was later identified that there were two additional flats within the 19 Russell Street property, and the occupiers of these flats had not been notified. The occupiers of 19B and 19C Russell Street were subsequently notified on 8 May 2019 and the submission period closes on 6 June 2019. While any potential submissions from these occupiers cannot not be taken into account in this report, if a submission is received, any new issues raised can be discussed at the hearing. A full assessment of the effects on the property at 19 Russell Street is carried out below.
- [59] The submission received is summarised in the table below, and a full copy of the submission is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
David Ilian and Marie Ilian (Owners of 19 Russell Street).	Oppose	▪ The proposed townhouse will have significant adverse effects on our property, including effects on the peace and enjoyment of our property due to the sense of intrusion and encroachment onto our property created by the side yard breaches. This feeling is heightened by the number of windows facing our property. ▪ Earthworks will likely encroach on to our property and cause damage. Risk of subsidence of property due to depth of cut	Yes

		close to the boundary. ▪ Building so close to the boundary will cause disturbance to our land, maintenance and repair will not be able to be undertaken without trespassing or disturbing our land. ▪ Will affect development potential of our property if we were to redevelop in the future, as unable to build up to the 1m boundary setback due to separation distances required and potential fire hazard. ▪ Height Plane breaches will have an adverse effect on the peace and enjoyment of the airspace and views afforded by the height plane restrictions. Given the close proximity of the townhouse to our property, it is even more important that these height planes are not breached. The sloping walls will not mitigate such breaches. ▪ Significant concerns regarding the proposed earthworks, and the effects on the stability of our land. Earthworks to a depth of 3m could cause significant risk of collapse, subsidence and erosion of our land. These risks are heightened given the close proximity to our land that these earthworks will be undertaken. ▪ Consent should be declined on the basis that the breaches will have various material adverse effects on our property that are significant and which do not outweigh the benefits of the construction of the proposed townhouse.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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

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

Permitted Baseline

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

[62] In this situation, residential activity and earthworks are permitted activities on the site provided the relevant performance standards are met. These include, but are not limited to, compliance with height, yard, coverage, height plane, transportation, and amenity open space requirements for residential activity, and minimum setbacks and maximum scale thresholds for earthworks.

[63] In this case it is considered that the permitted baseline includes a building which complies with the performance standards above. While it is noted that a building of up to 12m height is permitted on this site under the Proposed 2GP, it is unclear whether in practice a building could be constructed up to 12m without breaching the height plane angles, due to the narrow and steep nature of the site. As such, in the assessment below, I have not relied on the permitted baseline.

[64] It is noted that the applicant provided shading diagrams to illustrate the shading created by the proposed dwelling compared to a building allowable under the Proposed 2GP. The shading diagrams showing the shading created by an allowable building under the Proposed 2GP are considered to be fanciful, as it is likely that any building constructed up to the 12m height would be too narrow to be useable due to the height plane angles. For these reasons, I have not relied on these shading diagrams.

[65] The applicant did provide a further shading diagram, which compared the shading created by the proposed dwelling, with the shading that would be created by the proposed dwelling if it had no height plane angle breaches on the south-east boundary, for September 20 (equinox). These plans have been taken into consideration in the assessment of effects below, and the applicant has been advised that additional shading diagrams for other times of the year may be useful for the hearing.

- [66] The receiving environment around the subject site is characterised by single and double-level older-style villa dwellings interspersed with more modern infill residential development. The access leg from Russell Street is presently partly occupied by a footpath and associated brick retaining walls for the access to the residential unit at 19 Russell Street. Development of this area of the subject site for access to the proposed dwelling is not proposed at this time. The access to the southern side of the site is via a right of way over 109 Arthur Street which is sealed but in poor repair. This accessway also serves at least six other units, including that at 109 Arthur Street.
- [67] The site to the west of the subject site (at 103 Arthur Street) is owned by the applicant. This site is currently vacant, however has resource consent to construct a dwelling.
- [68] Under Section 104C of the Act, the Council, when considering an application for resource consent for a restricted discretionary activity, must consider only those matters over which its discretion is restricted, and if granting consent, can only impose conditions only for those matters over which discretion is restricted. In this case the Council's discretion is restricted to those matters outlined in the reasons for consent, above.

Assessment of Effects

- [69] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential) and 17.8 (Earthworks) of the Operative Plan, and Sections 15.11 (Residential) and 8A.6 and 8A.7 (Earthworks) of the Proposed 2GP. Accordingly, assessment is made of the following effects of the proposal:
- Bulk, Location, Design, Appearance and Amenity Values;
 - Heritage Streetscape Character
 - Earthworks and Retaining Walls

Bulk, Location, Design and Appearance and Amenity Values

- [70] As discussed above, the subject site is a compact and unusually shaped rear site, with sloping terrain. The applicant notes in their application that the proposed development has been specifically designed for the site and the spectacular views that can be achieved. The dwelling comprises two main levels, with a basement carport and storage area underneath. The carport will be set into the slope of the site, with an approximately 3m high retaining wall supporting it. The dwelling is to be clad in coloursteel, white painted weatherboards, and painted titan panels.
- [71] The applicant has provided 3D modelling diagrams showing the extent of the height plane breaches, under both the Operative Plan and Proposed 2GP. Shading diagrams have also been prepared for the proposal, in comparison with the same building, with the height plane breaches to the south-east removed.
- [72] The effects on all surrounding properties are assessed below.

19 Russell Street

- [73] The property to the north (at 19 Russell Street) is a two level character building, containing four residential units. The dwelling is situated approximately 7.5m from the rear boundary (with the subject site). Directly adjacent to the boundary is an outdoor living area which is currently grassed, and contains a washing line.
- [74] It is noted that the required height plane angle to the northern boundary is breached to a moderate degree, and the required yard is also breached on this boundary in several locations.
- [75] The owners and occupiers of 19 Russell Street were considered to be adversely affected by the proposal and were notified of the application. The owners of 19 Russell Street (David and Marie Ilian) made a submission in opposition to the application, which is summarised in the table above, and also included in Appendix 2. Their main concerns regarding the bulk and location of the proposed building are related to adverse effects on the amenity of their property, due to the height plane breaches and yard breaches.
- [76] In particular, Mr and Mrs Ilian have concerns that the proposed building would have adverse effects on the peace and enjoyment of their property due to the sense of intrusion and encroachment onto their property created by the side yard breaches.
- [77] I note that due to the dimensions of the unusually shaped site, the building extends along the northern boundary and wraps around the site towards the north east. The dwelling has been designed with modulations to break up the bulk of the building with three large bays clad with sloping, roof-like walls.
- [78] The design of the building has been reviewed by Council's Urban Designer Mr Peter Christos, who commented as follows:
- [79] *"In my view, the proposed development makes good use of a difficult site close to the central city. The breaches are largely contained to parts of the site that would not have a significant impact on housing to the south of the subject site or the surrounding streetscape. While there would be minor negative effects because of bulk along the shared boundary with 19 Russell Street, I feel that these could be managed by softening the built form with landscape treatments (where space allows) along the shared boundaries".*
- [80] It is recommended that a condition of consent is included to require a landscape plan be submitted prior to commencement of construction.
- [81] Overall, taking into account the advice provided by Mr Christos, it is considered the adverse bulk and dominance effects on the property at 19 Russell Street will be minor.
- [82] As the subject site is located to the south of the submitter's property, there will be no shading effects created by the proposed building on either the outdoor living area or the building on the submitter's property.

- [83] Mr and Mrs Ilian also raise concerns that the sense of intrusion would be exacerbated by the number of windows facing their property. I note that the windows on the northern façade of the proposed building are mainly high level windows, which will allow light into the proposed dwelling, while also maintaining privacy for the occupants of both the proposed dwelling and the neighbouring property to the north. The large windows to the eastern end of the northern elevation are over the stair well, not a main living or kitchen area. As such, I consider the placement of windows will ensure privacy effects on the submitter's property are minor.
- [84] Mr and Mrs Ilian also raised concern with the yard breaches on the northern boundary, as the site boundaries have not been accurately surveyed, and as some of the walls are sitting directly adjacent to the boundary, these could encroach on the submitter's property. The applicant has noted in a phone conversation that a surveyor would be used to set out the foundations to the building to ensure it was located wholly within the property boundaries. A condition of consent has been recommended in relation to this.
- [85] Concerns were also raised by the submitters about the yard breaches, as they do not consider that the dwelling can be constructed without causing damage to their property, and maintenance or repair of the walls built up to the boundary will not be possible in the future without going onto the submitter's property. Mr and Mrs Ilian also have concerns that their development potential is reduced by the yard breaches.
- [86] It is considered that these are valid concerns, however, any effects from the construction of the dwelling would be temporary, and a condition of consent can be imposed to minimise the risk of potential damage to neighbouring properties.
- [87] Overall, it is considered that any adverse effects on the property to the north (19 Russell Street) will be minor, and able to be mitigated by conditions of consent.
- [88] It is noted that while the effects of the proposal are considered to be minor, these effects could be further reduced by redesigning the proposed dwelling to remove the three modulated bays or alter the external cladding to reduce the physical dominance of the wall cladding. Removal of the three bay modulations would also assist in alleviating the submitter's concerns regarding damage to property during construction, future development potential, and on-going maintenance concerns. Removal of the bays would also allow room for additional landscape planting to be established in the yard space, to provide further mitigation. This is something the applicant may wish to consider, and discuss further at the hearing.

102 and 102B Canongate

- [89] In terms of the infringements to the southern boundary, it is noted that these are substantial breaches (as outlined in the reasons for consent), and have the potential to create adverse dominance, shading and privacy effects on the properties to the south. There are two properties located to the south of the subject site: 102 Canongate and 104 Canongate.

- [90] The dwelling at 102/102B Canongate is a large character building, situated towards the Canongate Street frontage, with the outdoor living area to the rear, adjacent to the subject site. The owners and occupiers of 102 and 102B Canongate were notified, due to the extent of the infringements adjacent to their boundary. The owners/occupiers of this property did not make a submission.
- [91] Due to the orientation of the proposed dwelling, the infringements are created by the corners of the dwelling, and do not extend along the full façade of the proposed building adjacent to the boundary with 102 Canongate.
- [92] The applicant has provided shading diagrams to illustrate the shading effects on the properties to the south. The relevant shading diagrams compare the shading effects created by the proposed dwelling with the shading created by the proposed dwelling with the height plane angle infringements removed, at the spring equinox (September 20).
- [93] These diagrams show that the height plane angle infringements on the south east corners of the proposed dwelling would slightly increase the shading experienced by the dwelling at 102 Canongate, when compared to the building with no height plane infringements. In particular, there would be a small increase in shading to the rear yard of 102 Canongate, in both the noon and 2pm times at the September equinox. At the 2pm time, the shading would extend to cover a small portion of the north-east corner of the dwelling on 102 Canongate.
- [94] Based on these shading diagrams, it is considered that the shading created by the height plane infringements would have minor adverse amenity effects on the property at 102 Canongate.
- [95] In terms of dominance and privacy effects, due to the steep topography of the area, any dwelling constructed on this site would be set at a higher level than the site at 102 Canongate, and some dominance and privacy effects are therefore anticipated. However, due to the height plane breaches, the proposed dwelling will have greater dominance effects than a complying building. As discussed above, the height plane breaches are created by the corners of the dwelling, and although large, they do not extend along the full façade of the proposed building.
- [96] Council's Urban Designer Mr Christos noted in his assessment of the proposal that "breaches to the south (affecting 102 and 104 Canongate) are largely mitigated by separation distances, aspect and topography". He concludes that "the breaches are largely contained to parts of the site that would not have a significant impact on housing to the south of the subject site or the surrounding streetscape".
- [97] Overall, any dominance and privacy effects experienced by the property at 102 Canongate are considered to be minor.

104 Canongate

- [98] The dwelling at 104 Canongate is set towards the centre of the site, over 10m from the boundary with the subject site. The house is orientated towards the Canongate street frontage to the south, away from the subject site. There is a single garage located adjacent to the shared boundary with the subject site.

- [99] The proposed dwelling is set back from the shared boundary with 104 Canongate, and located at an angle to the boundary so that the separation distance increases to the west, to a distance of 5.5m. The height plane infringement directly adjacent to 104 Canongate is a small infringement created by the balustrade on the proposed first floor deck. There are also larger height plane angle infringements adjacent to 102 Canongate that will create some increased shading on the site at 104 Canongate.
- [100] The shading diagrams provided by the applicant show that any increase in shading on the property at 104 Canongate created by the height plane infringements would fall mainly on the single garage, and would not affect the outdoor living area or the dwelling.
- [101] As above, due to the steep topography of the area, any dwelling constructed on the subject site would be set at a higher level than the site at 104 Canongate, and some dominance and privacy effects are therefore anticipated.
- [102] Overall, due to the separation distance between this dwelling and the subject site, and the location of the garage on the shared boundary, any adverse effects on this property are considered to be less than minor.

13 Russell Street

- [103] The height plane angle and yard breaches to the eastern boundary occur adjacent to the south-west corner of the site at 13 Russell St. The dwelling on that site is set towards the front (northern end) of the site, well away from the portion of the infringed boundary. The dwelling is also located at a higher level than the proposed dwelling. The area on 13 Russell Street adjacent to the infringement is currently covered in vegetation.
- [104] It is also noted that due to the orientation of the proposed building, the height plane angle and yard breaches to the eastern boundary are caused by the corners of the dwelling, and do not extend along the full length of the building facade.
- [105] Therefore, it is considered that the adverse amenity effects on the property at 13 Russell Street arising from the proposed height plane angle and yard breaches to the eastern boundary will be less than minor.

23 Russell Street and 103 Arthur Street

- [106] There is one small technical breach to the required yard setback on the north-western boundary. The property on 103 Arthur Street is owned by the applicant. This site is currently vacant, but has resource consent to construct a dwelling.
- [107] The site at 23 Russell Street contains a dwelling located at the front of the site, and has dense vegetation at the rear of the site, adjacent to the subject site.
- [108] It is considered that any adverse effects on these properties will be negligible.

On-site amenity

- [109] The required amenity open space cannot be provided on the site due to the size of the proposed dwelling and the constraints on remaining areas of the site for rights of way to other properties. It is noted that the proposed development will comply with building coverage and impermeable surfaces performance standards, but large areas of the site are not able to be utilised for outdoor amenity space due to the right of way easements in favour of neighbouring properties (shown as Easement D and Easement F of the Existing Site Plan sheet Sk01).
- [110] Two deck areas have been provided for outdoor living, one accessed from the living area on the first floor (9.2m² in size), and one accessed from Bedroom 1 on the ground floor (6m² in size). Both areas are on the southern side of the dwelling, which will have views across the city.
- [111] Areas of the site that are not developed with driveways or the dwelling are likely to be finished in planting due to the slope of the site and will provide some green space around the dwelling. Any residual adverse amenity effects arising from the lack of outdoor amenity space will predominantly be experienced by the occupiers of the proposed dwelling.

Conclusion

- [112] Overall, it is considered that the proposed dwelling will create minor adverse amenity effects on properties at 19 Russell Street and 102 Canongate, resulting from the bulk and location of the building.
- [113] As the site is a rear site, and not highly visible from surrounding streets, the proposal will not detract from the amenity values of the zone, and the on-site amenity will be provided for by the two deck areas, which will create outdoor living space with views across the city.

Heritage Streetscape Character

- [114] The site is within a residential heritage precinct, and involves construction of a new building visible from a public place. The houses on Russell Street to the north, east and west of the subject site are all character contributing buildings. The matters for discretion are limited to effects on heritage streetscape character.
- [115] It is noted that Council's Heritage Advisor (Andrea Farminer) and Urban Designer (Peter Christos) have not provided a full assessment of the proposal, as when the application was lodged, the Proposed 2GP rules relating to the residential heritage precinct were not in effect, and this was not a reason for consent. However, in the time period since the application was lodged, these rules have become applicable. The applicant has agreed to provide plans showing the visibility of the proposed dwelling when viewed from Russell Street as part of the evidence exchange prior to the hearing. Ms Farminer and Mr Christos will then provide further assessment at the hearing, as necessary.
- [116] Both Ms Farminer and Mr Christos have visited the site and provided initial advice. In terms of impact on the streetscape, Ms Farminer and Mr Christos noted that the building will be well set back and below the street level. As the building is likely to have minimal visibility from Russell Street, Ms Farminer and Mr Christos noted it

could not be considered to have significant impacts on the heritage values of the precinct. Both Ms Farminer and Mr Christos were comfortable with the proposal, subject to additional information being provided showing the roofline in context with the neighbouring buildings, and subject to final detailing, regarding colour and materials. As mentioned above, this information will be provided for the hearing.

[117] Ms Farminer and Mr Christos also felt the visual impacts from Arthur Street would be somewhere between zero and very minor.

[118] Based on this initial advice, I consider that any adverse effects relating to heritage streetscape character will be minor, and able to be mitigated by conditions of consent relating to colour and materials, if required.

Earthworks and Retaining Walls

[119] The matters for discretion for earthworks and retaining walls under the Proposed 2GP are limited to visual amenity and amenity of surrounding properties, and effects on the stability of land, buildings, and structures.

[120] The matters for discretion when assessing earthworks under the Operative Plan are as follows:

- (a) *Adverse effects on the amenity of 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.*

As the earthworks were not granted an earthworks permit prior to 1 July 2010 and do not form part of a project that was granted building consent on or after 1 July 2010, the Council's discretion also extends to the following matters:

- (g) *Design and engineering of retaining structures and earthworks.*
- (h) *Effects on the stability of land and buildings.*
- (i) *Effects on the surface flow of water and on flood risk.*
- (j) *Effects on underground utilities.*

[121] The Proposed 2GP and Operative Plan matters for discretion are covered in the assessment below.

Amenity/Visual Effects

[122] In relation to the more general visual amenity effects of the earthworks, it is considered that the scale of proposed earthworks is anticipated in association with the residential development of the site, given the slope of the site and the small site area. The earthworks will be contained within the subject site and will predominantly result in cuts rather than elevated ground levels, which reduces the potential for amenity effects on neighbours.

- [123] While the amenity of the site will be reduced during the construction phase, this will be of relatively short duration. Upon completion of the proposal, the main areas of cut will be visually filled by the bulk of the dwelling or finished with retaining walls built to a standard anticipated in a residential environment.
- [124] It is noted that the site is a rear site, and as such views of the site from public places are limited. The dwelling has also been designed to sit on pole foundations, which further reduces the amount of earthworks required and associated adverse visual and amenity effects.
- [125] It is expected that there will be noise effects associated with the construction of any development. To mitigate the adverse effects of construction noise, a condition of consent has been imposed requiring noise to be kept within certain limits during the specified days and times. This, along with the temporary nature of the construction noise, will ensure that adverse noise effects on neighbours will be less than minor.
- [126] The discharge of dust can cause a nuisance if not appropriately managed. A condition has been attached to this consent instructing the developer to dampen any loose soil to prevent dust escaping from the property boundary. In regard to vibration, the applicant is advised to inform their neighbours of the timing and scale of the proposed works, prior to any works being undertaken.
- [127] Overall, I consider that the development of the site is associated with residential activity and is to be expected within this zone. Provided conditions of consent are adhered to and advice notes followed, I consider that adverse effects relating to amenity and visual effects will be less than minor.

Effects on Archaeological and Cultural Sites

- [128] The 2GP zoning maps indicate that the property is subject to an Archaeological Alert Layer. As such, it is considered prudent to attach an accidental discovery condition to the consent to ensure that should an item of interest be uncovered during the works, proper protocol will be followed. An advice note is also recommended advising the consent holder to contact Heritage New Zealand to discuss the proposal and determine whether the site is considered an archaeological site.

Effects on the transportation network

- [129] The effects of the proposed earthworks activities on the transport network have been considered. Given the volume of cut proposed, there will be a number of truck movements to and from the site. To ensure that adverse effects on the transport network are minimised, conditions of consent have been imposed requiring measures to ensure roads are kept clear of debris, and the repair of any damage to infrastructure caused by the undertaking of works. Given that access to the site is via a shared right of way, these conditions are also imposed in relation to the private access. The consent holder is also advised that a pre-commencement survey of the current condition of the access way be undertaken to better enable damage generated by the activity to be identified. It is also recommended that, if not already in existence, a formal agreement be reached between the parties who share the use of the right of way regarding its repair and maintenance.

- [130] It is considered that, where the imposed conditions of consent and advice notes relating to the effects of the proposed earthworks on the transport network are complied with, the adverse effects on the network will be less than minor.

Sedimentation Effects

- [131] Measures to control the release of sediment from the subject site during the proposed earthworks and until full stabilisation of the site with retaining walls and vegetation have not been addressed as part of the application. However, given the steepness of the site and the scale of the proposed excavations, it is considered appropriate to impose conditions of consent to mitigate the potential for adverse effects from sedimentation. It is considered that, where the imposed conditions are complied with, any adverse effects arising from sediment release will be less than minor.

Cumulative Effects

- [132] As mentioned previously, the site at 103 Arthur Street is owned by the applicant. This site is currently vacant and has consent for construction of a dwelling, involving an earthworks volume of 198m³. As such there is potential for cumulative effects created by the earthworks on the two neighbouring sites. However, as both this consent and the consent at 103 Arthur Street will be subject to appropriate conditions to mitigate adverse effects, it is considered that any cumulative effects will be less than minor.

Design and engineering of retaining structures and earthworks and the effect on the stability of land and buildings

- [133] There are no hazards shown on the Hazards Register for this site and it is considered that there are no significant risks from natural hazards that need to be addressed as part of this decision. No existing structures are known to be in close proximity to the proposed works. However, Council's consulting engineer, Stantec New Zealand Ltd, has assessed the application for potential effects on the stability of land at the site and surrounding area, due to the scale of proposed works and the proximity of proposed cuts to the site boundaries. An excerpt from Stantec's comments is given below:

- [134] *"The proposed development poses significant excavations close to the property boundary ...As such, temporary stability will be a significant issue and an appropriate level of design and inspection will be required during construction to ensure the stability of the site is not adversely affected. We recommend that the application not be declined on the ground of known natural hazards. There are no general potential instabilities of concern."*

- [135] Stantec have recommended conditions of consent and advice notes for this resource consent. These have generally been adopted, except that advice notes have been attached as conditions where it is considered more appropriate.

- [136] Overall, it is considered that provided the attached conditions of consent are complied with, adverse effects on land stability arising from the proposed works will be less than minor.

Effects on the Flow of Water Bodies, Flood Risk, and on Underground Utilities

[137] No water bodies are located in proximity to the proposed works and the site is not subject to flood hazards. However, in relation to the potential for localised and nuisance flooding arising from the proposed works, a condition of consent has been added to require that such adverse effects do not occur. This is in line with the requirements likely to be imposed at the building consent phase.

[138] No Council infrastructure is located on the site, so no adverse effects on Council infrastructure are anticipated.

Effects Assessment Conclusion

[139] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so that any adverse effects will be minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

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

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

OBJECTIVES AND POLICIES ASSESSMENT

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

[142] In accordance with Section 104(1)(b) of the Act, the objectives and policies of the Operative Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

[143] The following objectives and policies of the Operative Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	Council's Urban Designer, Mr Peter Christos noted that the proposed development makes good use of a difficult site close to the central city. The proposal is considered to be consistent with these provisions.
Policy 4.3.1 Maintain and enhance amenity values.	

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	The adverse amenity effects have been assessed in detail above and it was concluded that adverse effects on surrounding sites would be minor. The proposal is considered to be consistent with these provisions.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	

Earthworks Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
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 proposal has been assessed by Stantec, who have advised that the site is suitable for the proposed development, subject to conditions of consent. In this regard the proposal is consistent with these provisions.
Policy 17.3.9 Control earthworks in Dunedin according to their location and scale	

Proposed 2GP

[144] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the Operative District Plan. The following proposed 2GP objectives and policies were considered to be relevant to this application:

[145] Although the Strategic directions are not intended to be applied directly to applications for resource consent, they are to be borne in mind when interpreting and applying the subsequent, detailed Plan provisions and are therefore relevant in this context.

Strategic Directions

Objective/Policy	Provision Subject to Appeal?	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 2.2.4.1 Compact and accessible city Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if	No	The subject site is zoned Inner City Residential, and has been identified as an area that can support opportunities for higher densities of development than other areas of the City. The proposal involves residential development of a currently vacant site within the zone, and

required and in the most appropriate form and locations.		is considered to be consistent with these objectives and policies.
Policy 2.2.4.1 Prioritise the efficient use of existing urban land over urban expansion by: a. identifying existing areas of urban land in a range of locations that could be used more efficiently to provide for medium density housing in accordance with Policy 2.6.2.3; and b. ensuring that land is used efficiently and zoned at a standard or medium density (General Residential 1, General Residential 2, Inner City Residential, Low Density, or Township and Settlement), except if: hazards; slope; the need for on-site stormwater storage; the need to protect important biodiversity, water bodies, landscape or natural character values; or other factors make a standard density of residential development inappropriate; in which case, a large lot zoning or a structure plan mapped area should be used as appropriate	No	
Policy 2.2.4.2 Encourage new residential housing development in the central city and larger centres, through rules that: a. provide for residential development in the central city and centres; and b. enable adaptive re-use of heritage buildings for apartments, including by exempting scheduled heritage buildings from minimum parking requirements.	No	
Objective 2.4.1: Form and structure of the environment The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment	No	It is not anticipated that the development will impact upon aesthetic appreciation of the environment. The site is a rear site and will have limited visual impact on the streetscape or the surrounding heritage precinct. The proposal is therefore

of the city are protected and enhanced. These include: ... c. built heritage, including nationally recognised built heritage;... e. the amenity and aesthetic coherence of different environments; and f. the compact and accessible form of Dunedin		considered to be consistent with these provisions.
Policy 2.4.1.3 Identify in a schedule of 'character-contributing buildings' (see Appendix A1.1), buildings that contribute to the heritage streetscape character of heritage precincts as a result of their design being broadly consistent with the predominant values and characteristics of the heritage precinct, and use rules to manage additions, alterations and demolition of these buildings. Design aspects that may be relevant in determining whether a building is 'character-contributing' include: a. building age; b. architectural style; c. materials; d. height; e. bulk and location; and f. quality	No	
Policy 2.4.1.5 In residential neighbourhoods, manage building bulk and location, site development (including site coverage), and overall development density to: a. maintain or create attractive streetscapes; and b. protect the amenity of residential activities and public open space	No	As discussed above, the proposal has the potential to create adverse amenity effects for the neighbouring residential properties at 19 Russell Street and 102 Canongate, due to the buildings bulk and location. As these effects have been assessed as being minor, it is considered that the proposal is consistent with this policy.

Earthworks

Objective/Policy	Provision Subject to Appeal?	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8A.2.1 Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: a. visual amenity and character; b. the stability of land, buildings, and structures; and c. surrounding properties.	No	The proposal has been assessed by Stantec, who have advised that the site is suitable for the proposed development, subject to conditions of consent. In this regard the proposal is consistent with these objectives and policies.
Policy 8A.2.1.1 Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, adverse effects on the stability of land, buildings, and structures by: a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b. using a batter gradient that will be stable over time	No	
Policy 8A.2.1.2 Require earthworks and any associated retaining structures, to be designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area, including sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems	No	
Policy 8A.2.1.3 Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where the following effects will be avoided or, if avoidance is not	No	

practicable, adequately mitigated: a. adverse effects on visual amenity and character; b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and c. adverse effects on the stability of land, buildings, and structures.		
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Heritage Section

Objective/Policy	Provision Subject to Appeal?	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 13.2.3 The heritage streetscape character of heritage precincts is maintained or enhanced.	No	Council's heritage advisor and urban designer have assessed the proposal, and do not consider that the development will have a significant impact on the heritage values of the precinct. It is noted that the site is a rear site, and conditions of consent will ensure that the colours and materials of the proposed dwelling will not impact on the streetscape. The proposal is therefore considered to be consistent with these provisions.
Policy 13.2.3.2 Require development within residential heritage precincts to maintain or enhance heritage streetscape character, including by ensuring: a. garages and carports do not dominate the street; b. off-street car parking is appropriately located or screened from view; c. building heights, boundary setbacks and scale reflect heritage streetscape character; d. building utilities are appropriately located, taking into consideration operational and technical requirements; and e. fences do not screen buildings from view	No	
Policy 13.2.3.7 Only allow buildings and structures that are visible from an adjoining public place, where their design, materials and location ensure the heritage streetscape character	Yes	

of the precinct is maintained or enhanced, including by: a. incorporating into the design the relevant preferred design features and characteristics listed in Appendix A2 and, where practicable and appropriate, the relevant suggested features and characteristics; b. maintaining existing views of scheduled heritage buildings and character-contributing buildings from adjoining public places as far as practicable; and c. ensuring structures whose design unavoidably conflicts with precinct characteristics are as unobtrusive as practicable		
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Residential Section

Objective/Policy	Provision Subject to Appeal?	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 15.2.2 Residential activities, development, and subdivision activities provide high quality on-site amenity for residents.	No	Due to the site's topography, size and shape, existing easements over the site, and the size of the proposed dwelling, the development is not able to provide the required amount of on-site amenity space.
Policy 15.2.2.1 Require residential development to achieve a high quality of on-site amenity by: a. providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, green space or recreation; b. having adequate separation distances between residential buildings; c. retaining adequate open space uncluttered by buildings; and d. having adequate space available for service areas.	Yes – relating to outdoor living space in the Inner City Residential Zone	Two deck areas are provided, which will consist of 9.2m ² deck off the living area on Level 1 and a 6m ² patio off a ground level bedroom. These areas are considered to be sufficient for the on-site amenity of residents. The deck will be directly accessible off a main living area, and although it is located to the south of the dwelling, it will obtain views over the city. The site will also have several areas of green spaces around the dwelling. The proposal is considered to be consistent with these provisions.
Objective 15.2.3 Activities in residential zones	No	The adverse amenity effects have been assessed in detail above and it was

maintain a good level of amenity on surrounding residential properties and public spaces.		concluded that adverse effects on surrounding sites would be minor. In particular, amenity effects on the neighbour to the north at 19 Russell Street are considered to be minor, and as this site is to the north of the proposed dwelling, there will be no shading effects on this site. The shading diagrams provided by the applicant showed that there would be a small amount of shading created by the height plane infringements on the outdoor living space of 102 Canongate, extending slightly onto the corner of the dwelling in one of the diagrams (Sept 20 at 2pm). It was concluded that the effects of this would be minor, when compared with the shading created by the same building, with no height plane infringements. Overall, it is considered that the proposal is consistent with these provisions.
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.	No	
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: a. enables a high quality, medium density form of development; b. is consistent with the existing streetscape character of the zone; and c. avoids or, if avoidance is not practicable, adequately mitigates, adverse effects on sunlight access on outdoor spaces at the rear of adjacent sites	No	

Overall Objectives and Policies Assessment

[146] Having regard to the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with those provisions contained within both the Dunedin City Operative District Plan and the Proposed 2GP.

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

[147] 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 1998 (RPS 1998), has been partially revoked following the introduction of the Partially Operative Regional Policy Statement for Otago 2019 (PORPS 2019).

[148] Some of the objectives and policies in the RPS 1998 remain operative, where appeals on the corresponding provisions in the PORPS 2019 have not been resolved. Of relevance to this application is Objective 9.4.3 of the RPS 1998, which seeks to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's

natural and physical resources, which includes damage to heritage resources and loss of amenity.

- [149] The relevant provisions in the PORPS 2019 include Objective 4.5 which seeks to ensure urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments, and Objective 5.2 which seeks to ensure that historic heritage resources are recognised and contribute to the region's character and sense of identity. Supporting policy 5.2.1 recognises elements important to Otago's historic heritage, including residential buildings.
- [150] The proposal involves residential development within an area identified as being suitable for higher densities than other parts of the city, and is considered to be a suitable use of the site. Although the proposed dwelling will have some adverse amenity effects, these have been assessed as being minor. The proposal has been reviewed by Council's heritage planner and urban designer, who have commented that the proposal will not create significant adverse effects in relation to the surrounding heritage precinct, subject to conditions.
- [151] The proposal is therefore considered to be consistent with the relevant objectives and policies within the RPS 1998 and the PORPS 2019.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [152] Based on the findings above, it is evident that the proposal would satisfy Part 2 of the Resource Management Act 1991. Granting of consent would promote the sustainable management of Dunedin's natural and physical resources.

Section 104

- [153] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [154] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [155] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to both the Dunedin City Operative District Plan and the Proposed 2GP.
- [156] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the RPS 1998 and the PORPS 2019.

Other Matters

[157] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.

RECOMMENDATION

[158] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions.

[159] I note that the design of the dwelling could be further amended to respond to the issues raised within this report, including the adoption of further changes to the three bay modulations that face 19 Russell Street. This said, these changes are only considered necessary to assist with further responding to the issues raised by the owner of 19 Russell Street, rather than making the development acceptable in a resource management sense, which has been concluded to be acceptable.

[160] Should the Committee be of a mind to grant consent, I have recommended conditions for consent as Appendix 4 of this report.

REASONS FOR RECOMMENDATION

[161] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be minor.

[162] The proposal is considered to be consistent with the key relevant objectives and policies of both the Dunedin City Operative District Plan and the Proposed 2GP.

[163] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago 1998 and Partially Operative Regional Policy Statement for Otago 2019.

Report prepared by:



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Consultant Planner

27 May 2019

Report checked by:



John Sule
Senior Planner

27 May 2019