

29 November 2016

Verkerk Stores Limited
C/- Gary Todd Architecture Limited
18 Estuary Crescent
Fairfield
Dunedin 9018

Dear Gary

RESOURCE CONSENT APPLICATION

**LUC-2016-129
138 UNION STREET
DUNEDIN**

The above application to establish two three-bedroom residential units and re-authorise an existing dairy and café activity on the site located at 138 Union Street Dunedin, was processed on a limited notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Panel (the Panel), comprising Commissioners Lee Vandervis (Chairperson), Mike Lord and Andrew Whiley heard and considered the application at a hearing on 9 November 2016.

At the end of the public part of the hearing, the Panel, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public. Following the conclusion of the hearing, a site visit was undertaken by the Hearings Panel and the Advisor to the Panel.

The Panel has **granted** consent to the application on 9 November 2016 subject to conditions. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by:

- Gary Todd (Registered Architect and agent for the applicant)
- Lynley and Lucien Verkerk (representing the Applicant, Verkerk Stores Limited)

Council staff attending were:

- Kirstyn Lindsay (Advisor to Panel),
- Melissa Shipman (Processing Planner)
- Peter Christos (Council's Urban Designer) and
- Wendy Collard (Governance Support Officer)

Submitters in attendance included:

- Charlotte Carr (Legal Counsel for the submitter She Chun Choie)

Procedural Issues

Commissioner Vandervis noted that due to changes to Council membership post the 2016 local body elections, Andrew Noone was no longer available to sit on the panel. As such, Commissioner Vandervis was now the chair of the panel and Commissioner Mike Lord replaced Andrew Noone.

Commissioner Whiley declared that he was acquainted with Mr Kinraid of 118 Union Street. It was noted that Mr Kinraid did not submit on the application and, as such, there was no direct conflict of interest and the Chair of the panel was comfortable that Commissioner Whiley could contribute to the decision in an impartial manner. This decision was not challenged by the applicant or submitter.

Ms Shipman tabled two recommended conditions [1 & 13] which differed because of timing errors from those recommended in the agenda. These corrected conditions were accepted by the Commissioners and not challenged by the applicant or submitter.

Ms Shipman also advised the Commissioners that amended plans were submitted after the application had been notified to the neighbours but that these amendments did not introduce any new areas of non-compliance or additional effects and therefore did not need to be re-notified.

There were no other procedural issues raised.

Principal Issues of Contention

The principal issues of contention are as follows:

- Whether it was appropriate to apply the permitted baseline,
- Density,
- The effects of the bulk and location of the proposal,
- Car parking requirements, and
- Water and Waste servicing.

Summary of Evidence

Introduction from Processing Planner

Ms Shipman spoke to her s42A report noting that the site was located in the Residential 3 zone of the operative Dunedin City District plan. She outlined the proposal which involved the demolition of the existing ground floor commercial building and replacement with a new three storey building (between 7m and 8.5m high), referring the Panel to the plans submitted with the revised application. She noted that the proposed building provided for a continuation of the existing commercial coverage at ground floor level with two, two level apartments containing three bedrooms each located above. Each apartment was to be two storeys with bedrooms located at first floor level in each apartment and kitchen/dining/living located at second floor level. She advised that the proposed apartments contain a high level of glass incorporated into the facade.

Ms Shipman noted that the proposal breached a number of bulk and location performance standards of the Residential 3 zone. A steel grid framework is proposed to frame the outdoor spaces. Parts of these structures protrude through the height plane angle. The new building occupies the side yard and exceeds the permitted site coverage of 50% (proposed 97%). It was her opinion that the building is of a height and setback from boundaries that ensures no more than minor effects on sunlight access of current and future residential buildings and their outdoor living spaces.

Ms Shipman noted that the density of the residential activity on the site exceeds the number of permitted habitable rooms in the Residential 3 Zone by 1.2 rooms. She noted that in terms of mitigating the effects of the increased density, the Council's Water and Waste Services Officer was satisfied that the effect of the additional bedroom on the Council service infrastructure can be mitigated by the design of the building and its ability to offset any potential/perceived greater load on Council infrastructure services. The applicant proposed a

rainwater detention tank below the service court which would regulate stormwater into the Council network during events of above usual rainfall. With regard to wastewater disposal, she noted that the applicant proposed all fittings and appliances will be the highest grade for water saving available (6 Star WELS rating). Ms Shipman concurred with the Council's transport officer's assessment that the effect on the transport network of omitting the required two on-site car parks is no more than minor. She considered that the effects on the safety and efficiency of the transport network, on accessibility, and the effects on the efficiency of infrastructure are considered to be mitigated.

Ms Shipman advised the Panel that one opposing submission has been received which raised concerns associated with the 2.6m retaining wall on the boundary and shading from the height of the building. She noted that the applicant had provided evidence demonstrating that the shading effects of the building were unlikely to adversely affect the submitter's property at 74 Forth Street. Further, she noted that the applicant stated that the existing retaining wall is higher than the proposed new wall.

Overall, Ms Shipman recommended that the Panel apply the permitted baseline when assessing the effects of this development. It was her opinion that the building had been designed to integrate with the adjoining land uses and built form and to contribute positively to the residential character and amenity of the area. She considered that the proposal achieves high quality on-site amenity for residents while maintaining residential amenity for adjoining residential properties. The residential character which includes streetscape amenity is considered to be enhanced and the built form is considered to reflect the intended future residential character of the area. Ms Shipman advised the Panel that her recommendation was to grant consent to the development.

The Applicant's Case

Mr Todd outlined his experience and then spoke to the application. He outlined the design process and how the final plans for the development were formulated with input from various parties including Council, University of Otago and Otago Polytechnic. Mr Todd agreed with the recommendation of the planner in the S42A report. He considered that the site was a unique location and that the development was designed to complement the corner location.

Mr Todd noted that the applicant had consulted with the neighbours prior to notification but that the submitter had chosen not to accept any ameliorating offers presented by the applicant. He noted that any such offers were now off the table. He noted that one of the concerns of the submitter was shading. Mr Todd referred the Panel to the shading diagrams included with the application which demonstrated a negligible shading effect at the submitter's property. He noted that the submitter had not provided any evidence of a shading effect.

Mr Todd noted another concern of the submitter related to the retaining wall. He noted that the proposed 2.6m retaining wall was below ground and would be replacing an existing 3.6m high retaining wall and, as such, any effect would be less than that which currently existed.

Mr Todd noted the submitter was also concerned with a loss of privacy. He advised the Panel that, while the covered walkways are proposed to extend to the boundary of 74 Forth Street, these would appear at ground level when viewed from that site and the bulk of the development was set back 2.4m from the boundary and 5.4 m from the dwelling at 74 Forth Street. He noted that the windows of the development were not directly aligned with the neighbouring building and that the windows at 74 Forth Street which faced the development were predominantly serviced bathrooms and bedrooms rather than living spaces. Mr Todd advised that the balcony spaces were orientated to look out over the street frontage rather than into neighbouring properties.

Mr Todd noted that the site currently experienced 100% site coverage. He noted that while the ground floor would occupy up to 97% of the site because of the covered walkways but the actual building footprint would be 87% allowing 10% of the site area for storage, service areas and bike parking and 3% open space.

With regard to parking, Mr Todd noted that the lack of on-site parking was considered acceptable by the Council's transportation planner. To provide parking on the site was not feasible in his opinion given the proximity to the intersection and the lack of on-site manoeuvring. He considered that providing on-site parking would not result in a nett parking gain overall as two street parks would be removed to provide access to the site. Mr Todd noted that the site was within walking distance to the CBD, university and polytech and there are bus stops located immediately outside of the site. He also noted that up to six bike parks on a 4m² space would be provided on the site at ground level with further bike storage possible at upper level accessways.

Mr Todd noted that the LPG storage on the site was within the permitted volumes provided for in the operative District Plan. He also noted that the retention of stormwater on the site had been approved by Council's water and waste services. When questioned regarding density, Mr Todd noted that the number of persons in each room was to be limited to one.

When questioned by the Panel, **Mrs Verkerk** advised that the existing hours of operation for the dairy were 7am - 9pm Monday to Friday and 7am - 6pm on Saturday, and that the café was open 7am - 4pm Monday to Friday. She noted that they were not entirely certain of the hours that they were permitted to be open and no supporting evidence regarding hours was provided. It was noted that a copy of RMA-2004-1137 was included with the agenda. This consent authorised the café component of the existing commercial activity. Commissioner Vandervis instructed the Panel Advisor, Ms Lindsay, to investigate the authorised hours of operation and report back to the applicant and the Panel.

Council officer reviews

Mr Christos spoke to his comments which had been circulated with the agenda. It was his opinion that the café has provided vibrant use of the corner site and contributes positively in terms of activity. It was his opinion that the proposed design would provide a suitable building for the site and a positive definition of the corner which a fully complying design may not. Mr Christos accepted the applicant's evidence with regard to shading and noted that the submitter had not provided any evidence to the contrary and, as such, he considered that it was reasonable to anticipate that the shading effects on the submitter's property would be negligible. He noted that the colours to be used were recessive in nature.

Mr Christos said that outdoor space is provided via balconies at the first floor. Steel frames have been included to maintain a strong rectilinear envelope. The open nature of this helps to mitigate some of the effects of the height plane breach while being visually compatible with surrounding architecture. Overall, Mr Christos believed that the proposal would be a significant improvement when compared to the existing building on the site.

Evidence of Submitters

Ms Carr spoke to her client's submission noting that they had changed their stance and were now not opposed to the application providing a number of conditions were met. The conditions sought included:

- A height limit of 2 stories and 6-7 metres in height;
- The building to be compliant with the current height plane angle requirements of the operative Dunedin City District Plan;
- The building to be set back 6-7m from the applicant's building;
- That the retaining wall be constructed from beams and permeable in nature.

Ms Carr requested that the Panel use their discretion when applying the permitted baseline and that the submitter suggested that the baseline was not appropriate in this instance. Overall, Ms Carr was satisfied that if the changes identified above were incorporated into the design then the effects of the development in terms of amenity, light, shading and privacy on her clients would be no more than minor.

Processing Planner's Review of Recommendation

Ms Shipman reviewed her recommendation and noted that there was no new evidence introduced at the hearing which would cause her to change her recommendation. She advised the Panel that if they were looking to extend the hours of operation of the dairy and café, they would need to be mindful that they did not go beyond the scope of the application.

Ms Shipman also mentioned signage on the site, noting that it was expected that any revised signage was likely to be an improvement to that which existed and that a condition requiring it to be approved by Council Planning would be sufficient to manage the effects of this.

Ms Shipman considered that the permitted baseline should be applied when assessing the effects of this development. She noted the submitter's request for a 6-7m separation from the dwelling at 74 Forth Street and recognised that a 5.4m separation was already being achieved for the main footprint of the building and in her opinion this separation was sufficient. She also noted that the retaining wall was below ground so constructing it so it was permeable was impractical and would not achieve any additional airflow. She remained of the opinion that this development was a true exception given the location, the mixed used model and existing commercial activity on the site and that an undesirable precedent would not be set.

Applicants Right of Reply

Mr Todd reviewed the information which had been discussed at the hearing. He noted the submitter's change of stance but considered that the conditions that were requested by the submitter were unable to be reasonably implemented. He considered that the 5.4m separation between the buildings was very close to the 6m being requested by the submitter. He also noted that buildings were anticipated to be built 1.0m off the boundary as of right in this zone. Mr Todd observed that the submitter had not provided any evidence to demonstrate a greater shading effect than the evidence that the Panel had before them. He considered that the polytechnic building located on Forth Street would have significantly greater shading effects on 74 Forth Street than the building proposed.

Mr Todd reminded the Panel that the maximum height of 8.5m proposed for the development was below the 9m height threshold permitted as of right in the zone and the submitters request to limit the height to 2-storeys and no greater than 7m high was, in his opinion, unreasonable. With regard to the retaining wall, he noted the retaining wall could not be constructed of a permeable nature as it was located below ground.

Mr Todd believed the applicant had addressed concerns relating to water and waste services and the bike parks were a reasonable solution to a lack of on-site parking which was, in his opinion, impractical to achieve for the site. He welcomed the opportunity to clarify the hours of operation although he noted that there was a desire to open the café on Saturday morning if this was able to be approved. Overall, Mr Todd requested that the Panel grant consent to the application and he believed there were a number of positive benefits associated with this development.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Panel considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 20 Transportation and 21 Environmental issues. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Consideration was also given to the objectives and policies of the proposed Second Generation District Plan. Regard was also given to the Regional Policy Statement for Otago and the proposed the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Panel has considered the evidence heard, the relevant statutory and plan provisions, and the principle issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Panel reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken during the public-excluded portion of the hearing, the Panel inspected the site and this added physical reality to the Panel's considerations.

*That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of a new three storey mixed commercial/residential building replacing the existing single storey commercial building at 138 Union Street, Dunedin, legally described as Part section 50 Block XXXVI Town of Dunedin held in Computer Freehold Register OT75/5, subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision.

1. The Panel has considered the resource application to establish a new three storey mixed commercial/residential building to replace the existing single storey commercial building. Consideration was given to the existing environment, what was lawfully permitted at this location, the already consented commercial activity, and any existing use rights.

The Receiving Environment

2. The Panel visited the site and viewed the adjacent neighbouring sites taking particular note of the submitter's property and context in relation to the proposed application. The Panel noted that the receiving environment comprised of numerous buildings from 2-storeys adjacent north to 6-storeys across Forth Street to the east. The applicant's Shadow Study diagrams were considered and seen to be representative of the perceived environment. The use of the surrounding buildings was a mix of residential and tertiary education activities.

Permitted baseline

3. The Panel has considered the permitted baseline context in respect of the evidence it had received and the submission received. Mr Todd, for the applicant, and the Council Planner, Ms Shipman, both considered it was appropriate to apply the permitted baseline. They believed that the effects of a 9m high building built on the site to within 1 metre of adjacent properties and used for residential activity was a permitted, non-fanciful activity. If the baseline is applied, then it is only the effects of the proposed building beyond the baseline that the Panel must assess when considering the significance of effects. Ms Carr for the Submitter suggested that the permitted baseline was not appropriate for this proposal and urged the Panel to use their discretion and not apply the permitted baseline. Having considered all evidence provided and the views from the site visit, the Panel consider that it is reasonable to apply the permitted baseline.

Environmental effects

4. The Panel traversed all the wider environmental effects including height, setbacks, retaining wall, water and waste, density, parking, outdoor amenity space, amenity, character, design elements, noise, signage, and hours of operation. It recognises the concerns raised by the submitter regarding shading, height and the effects of the retaining wall. The Panel notes that the submitter sought a height limit of two-storeys being no greater than 6-7 metres high), strict compliance with permitted height plane angle requirements of the operative Dunedin City District Plan, the building to be set back 6-7m from the submitters own building at 74 Forth Street, and

that the replacement retaining wall be constructed from beams and be permeable in nature.

Bulk, Location and Design Elements

5. The Panel agree with Urban Designer that the proposed building is under the permitted 9m height and set back 2.4m which is greater than the required 1m side yard setback. The applicant has stated that there will be at least 5.4m separation distance between the bulk of the proposed building and the building located at 74 Forth Street. The Panel considers this setback is very close to the 6m sought by the submitter. Furthermore, the Panel believes this setback is consistent with other properties within the block and certainly greater than some. Ultimately, the Panel considered that the yard set-backs and height of the building fell within the permitted baseline and no further consideration was given to these aspects.
6. In recognising the effect of the proposed 97% site coverage, the Panel accepts that the existing consented building had 100% site coverage. Having accepted the existing permitted commercial use of the site, the Panel considers maintaining similar commercial site coverage to be appropriate. The Panel agrees with the Urban Planner that outdoor space is provided on top of ground floor roof. Steel frames have been included to maintain a strong rectilinear envelope. The open nature of this helps to mitigate some of the effects of the height plane breach while being visually compatible with surrounding architecture.
7. The Panel closely considered the objection by the submitter regarding the encroachment into the height-plane angle by the balconies. While there are height plane breaches, the Panel accepts the shading diagrams submitted by the applicant and notes that the submitter did not provide any evidence to contradict those shading diagrams. In lieu of any evidence to the contrary, the Panel accepts that the effects on the submitter will be negligible. Furthermore, the Panel considers that the environment can easily absorb these effects and the outcome is a building form that is compatible with the immediate environment.

Retaining wall

8. The Panel accepts the ground level should be measured as specified in the Operative District Plan at July 2010 when the earthworks rules set out in chapter 17 were introduced. As such, the Committee recognises that there is a significant difference in the ground level at the subject site which is set down much lower when compared to the neighbouring ground level at 74 Forth Street. The retaining wall supports this existing difference in ground level. The submitter requested that the proposed retaining wall between the subject site and 74 Forth Street be constructed from beams and be permeable in nature. The Panel noted that given the supporting function of the retaining wall, it needed to be solid to perform this function and a permeable wall was impractical and, even if permeability was required, would not achieve the outcome sought by the submitter.

Hazardous substances

9. It is noted that the storage and use of LPG on the site as detailed within the application is assessed as a permitted activity under the Operative District Plan.

Infrastructure servicing

10. The Panel accepts that the site is currently serviced but note that a second separate water connection is required to service the above residential activity. The Panel accept the advice from Council's Water and Waste Services department that water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers, are required. These water saving devices will assist in reducing water consumption and the average volume of wastewater being disposed of from the development. Conditions of consent regarding the application for water supply and water saving devices have been imposed as conditions of consent.

11. With respect to stormwater services, the Panel notes that a detention tank has been offered by the applicant to ease pressure on the Council owned network. The Panel accepts this offer and has included this as a condition of consent. The Panel notes that details of the stormwater detention system are to be finalised during the building consent stage. Advice notes advising the consent holder that development shall be undertaken in accordance with the code of subdivision and development have been included.

Car Parking

12. In regard to parking demand for the commercial activities within the site, The Panel considers that there will be little, if any, change as a result of the proposed reconfiguration, given that the total floor area will remain unchanged. The Panel notes that each residential unit requires a single on-site parking space, as per the parking requirements of the Residential 3 zone. No on-site parking is proposed; therefore the residential component of the proposed development will result in a parking shortfall of two parking spaces.
13. The Panel accepts that creation of parking on the site is not practicable given the site coverage and it also notes that creation of any parks would result in the removal of two kerbside parking spaces. Furthermore, The Panel accepts that that establishment of vehicle accesses into the site may diminish the level of service (safety and efficiency) of footpaths adjacent to the site, which anecdotally experience significant pedestrian demand due to tertiary education activities near the site.
14. The Panel notes that the site is located in close proximity to the campus area, and is well placed to take advantage of alternative transport options such as bus routes, and the Central City Cycle Network to access the wider city. The Panel supports the inclusion of dedicated covered and secure bicycle storage facilities provided within the site in order to encourage the use of alternative transport modes.
15. Given the aspects outlined above, the Panel accept that requiring on-site parking for this particular development would be somewhat onerous, and would not provide an overall parking improvement for residents and the public alike.

Signage

16. The Panel notes that there is a significant amount of signage erected on the site but that there were no details regarding new signage proposed for the activity. The Panel believes in terms of effects that any proposed signage can be reasonably managed by way of condition of consent. This is because the effects of signage on the site are already significant and any new signage is expected to observe a reduction in visual effects. The condition requires the signage to be approved by the resource consent manager before it is erected on the site.

Hours of Operation

17. The Panel notes that the hours of operation identified by the applicant at the hearing are as follows:
 - The dairy - 7.00am-9.00pm Mon-Fri and 7.00am-6.00pm on Saturdays.
 - The café - 7.00am -4.00pm Mon-Fri

The applicant requested at the hearing that they would like to operate the café on Saturday mornings also.

18. The Panel accepts that the authorised hours of operation of the dairy are not clear. As advised to the applicant at the hearing, a search of council records was undertaken at the conclusion of the hearing to attempt to establish the lawful hours for the dairy. The Panel notes that the dairy and a butchery was established on the site sometime around 1968. It is assumed that, subject to performance standards, these were permitted activities under the operative District Scheme in effect at the time. Performance standards appear to have been limited to noise provisions only and it does not appear that hours were controlled. It may be that the weekend and

night trading may have been controlled by alternative legislation but this assumption is speculative only.

19. In 1993, a resource consent to allow the sale of liquor (off-licence) was issued for the part of the site which was formally the butchery. The hours approved for this were 11.00am to 10.00pm. The Panel are not aware of any evidence as to whether this consent was given effect to (i.e. no evidence of a liquor licence being issued) and have consequently have disregarded this. The applicant has not provided any evidence to the contrary. In 2000, a consent was obtained for the café part of the operation. The approved hours of operation were 7.30am to 4.30pm only. The consent did not state the days of operation. The Panel notes that this consent was varied in 2004 but did not further clarify the hours or days of operation.

20. The Panel turned its mind to the operative District Plan noise provisions and noted that for Monday to Saturday these are given as:

- Day time 8.00am -6.00pm;
- Shoulder period 7.00am to 8.00am and 6.00pm to 9.00pm; and
- Night time 9.00pm to 7.00am

21. When considering the vagaries of the approved hours on the site, the noise provisions of the district plan, and the established effects of the activity which is currently occurring on the site, the Panel felt that it is reasonable to authorise the hours as follows:

- Dairy - 7am-9pm Monday-Friday and 7am-6pm on Saturdays
- Café - 7am-4pm Monday-Friday and 7am-4pm on Saturdays

22. The Panel notes that the effect of the café operating on a Saturday in that campus environment is expected not to introduce any significant effects. The Panel are comfortable in approving this extension and do not believe it goes beyond the scope of the application as notified.

Density

23. The Panel recognises that approving the proposal will result in a density breach under the operative District Plan. The Panel believes that the specific location of the site and the on-going historic occupation of the site with commercial activity means that the authorisation of an additional habitable room over and above that would be permitted as of right on the site is commensurate with the scale of the development. The form of the development is such that the Panel does not believe that granting of this proposal would result in over-intensification of the site despite falling short of the density requirement in Rule 8.9.1(i) by 54m². The Panel accepted the Planner's view that the short-fall effects are able to be mitigated by the design and conditions of consent.

Surrender of earlier consents

24. The changes proposed by the application means that existing 2000 and 2004 consents will not address the increase in scale and changes in intensity and nature of the various activities on the site. It is these increases and changes which also discount the possibility of a variation of the 2000 and 2004 consents being the appropriate mechanism to consider these changes. As such, the Panel considers it is appropriate to re-authorise the existing consented commercial activity in conjunction with new residential activity. The Panel, therefore, requires the surrender of the 2000 and 2004 consents as a condition of this consent.

Determination

25. The Panel accepted the evidence from Ms Shipman that an overall assessment of the objectives and policies of both the Operative and Second Generation District Plans indicated that the proposal is consistent with the relevant objectives and policies of both plans. The Panel has given limited weight to the proposed Second Generation

Plan objectives and policies as these are still subject to challenge and submissions are still being heard.

26. The objectives and policies of the Regional Policy Statement for Otago and proposed Regional Policy Statement for Otago were considered and the proposal is considered to be consistent with the relevant objectives and policies of both the current and proposed Regional Policy Statements.
27. Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of Section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan.
28. In this instance, the Panel considers that as the Proposed 2GP 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 2GP. Having considered that the proposal, the Panel accepts Ms Shipman's assessment of the objectives and policies and that any adverse effects arising from this proposed activity will be no more than minor meets and as such the proposal meets both limbs of the Section 104D test and therefore, the Panel can exercise its discretion under Section 104D to grant consent.

True Exception

29. Section 104(1)(c) of the Resource Management Act 1991 requires the Panel to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered relevant here. These issues have been addressed by the Environment Court (starting with *A K Russell v DCC (C92/2003)*) and case law directs the Panel to consider whether approval of a non-complying activity will create an undesirable precedent. Where the Plan's integrity is at risk by virtue of such a precedent, the Panel may apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the district plan and proposed district plan. The Panel notes that while the "true exception" test is regularly applied by the Court to non-complying activities, it is considered that the test is no longer compulsory as determined in *Mason Heights Property Trust v Auckland Council* [2011] NZEnvC 175, para [88]. However, *Mason Heights Property Trust v Auckland Council* does note that the test can assist 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. This approach was supported *Cookson Road Character Preservation Society Inc v Rotorua District Council* [2013] NZEnvC 194.
30. For completeness, the Committee recognises in this instance, the proposal has not been assessed as contrary to the objectives and policies and the Panel are comfortable that the previously consented commercial activity on the site, existing 100% site coverage, well-defined corner location, and that the site abuts the Campus zone and large buildings associated with that environment sets this site apart from other applications for density breaches. The Panel consider that it would be unusual for another application with these attributes to come before it. Overall, the Panel consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any, and will not set an undesirable precedent.
31. Overall, the Panel, when considering sections 5, 6, 7 and 8 of the RMA, concludes that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Right of Appeal

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to Kirstyn Lindsay, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

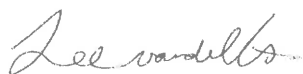
Monitoring

Section 35(2)(d) of the RMA requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works/activity, this consent will require one inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspection will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully



Commissioner Lee Vandervis
Chair – Hearings panel

Consent Type: Land Use Consent

Consent Number: LUC-2016-129

*That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the establishment of a new three storey mixed commercial/residential building replacing the existing single storey commercial building at 138 Union Street, Dunedin, legally described as Part section 50 Block XXXVI Town of Dunedin held in Computer Freehold Register OT75/5, subject to conditions imposed under Section 108 of the Act, as shown below:*

Location of Activity: 138 Union Street, Dunedin

Legal Description: Part section 50 Block XXXVI Town of Dunedin (CFR OT75/5)

Lapse Date: 29 November 2016

Conditions:

1. *The proposal shall be constructed generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 27 July 2016 and revised drawings received on 29 September 2016 except where amended by the following conditions:*

General

- 2 *A Construction Management Plan should be submitted to, and approved by, the Resource Consents Manager prior to demolition works being undertaken in association with the proposed development.*
- 3 *The consent holder shall advise the Council, in writing, of the start date of the works. The written advice shall be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.*

Glare

- 5 *The activity authorised by this consent shall produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan.*

Noise

- 6 *All construction noise should 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
	2000-0630	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public Holidays	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

- 7 *The consent holder shall ensure noise from activity taking place on the site will not exceed the performance standard set out in Rule 21.5.1 of the District Plan. All activities undertaken on the site shall not exceed the following noise limits at or within the boundary of any other property.*

<i>Monday to Sunday from 8am to 6pm</i>	<i>50dB(A)L10</i>
<i>Monday to Sunday from 7am to 8am</i>	<i>45dB(A)L10</i>
<i>Monday to Sunday from 6pm to 9pm</i>	<i>45dB(A)L10</i>
<i>At all other times including</i>	<i>35dB(A)L10</i>
<i>Daily from 9pm to 7am the following day</i>	<i>75dB(A)Lmax</i>

Noise levels shall be measured in accordance with the provisions of New Zealand Standard 6801:1991 Measurement of Sound and assessed in accordance with the provisions of New Zealand Standard 6802:1991 Assessment of Environmental Sound, except that the definition of "Notional Boundary" used in the Dunedin City District Plan shall apply.

Transportation

- 8 *A designated bike storage area shall be provided within the site for more than four bikes. The designated area shall be located outside of amenity open space areas or if located within open space amenity areas the storage shall be above ground and not interfere with the use of the open space amenity areas.*
- 9 *Details of the verandahs (relative to the kerb and pavement) shall be submitted to, and approved by the Resource Consents Manager, at least one month prior to construction of the development.*

Infrastructure Servicing

- 10 *An "Application for Water Supply" is to be submitted to the Water and Waste Services Business Unit for approval to establish a new water connection to the development. Details of how the proposed development is to be serviced for water shall accompany the "Application for Water Supply".*
- 11 *Upon approval by the Water and Waste Services Business Unit, water service connections shall be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*
- 12 *The consent holder shall install water saving devices, including, but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers.*
- 13 *The consent holder shall prepare a Stormwater Management Plan (SMP) which shall include stormwater detention. The SMP shall be submitted to, and approved by, the Resource Consents Manager. Stormwater shall be managed on the site in accordance with the SMP.*

Erosion and Sediment Control

- 14 *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.*
- 15 *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.*

Signage

- 16 *No signage shall be installed on the exterior of the building unless it has been submitted to, and approved by the Resource Consents Manager prior to installation.*

Hours of Operation

- 17 *The hours of operation for the dairy and café are:*
i. Dairy - 7am-9pm Monday-Friday and 7am-6pm on Saturdays
ii. Café - 7am-4pm Monday-Friday and 7am-4pm on Saturdays

Surrender of consents

- 18 *Prior to the commencement of this consent, the consent holder shall surrender Land Use consents RMA-2000-364369 (formally RMA20000734) and RMA-2004-368541 (formally RMA20041137).*

Advice Notes:

1. In addition to the conditions of resource consent, the Resource Management Act establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
4. It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
5. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
6. As the proposed building extends to the front and side boundaries care should be taken by the consent holder to accurately identify the position of these boundaries prior to building construction. Confirmation by a licenced cadastral surveyor may be required.
7. The issuing of this consent does not convey the right to enter or otherwise interfere with property belonging to any other party.

Erosion and Sediment Control

8. The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off:
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).

Archaeological Authority

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

10. 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 shall/should be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work shall/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, shall/should make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; 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.

Code of Subdivision

- 11. Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.

Fire-fighting Requirements

- 12. All aspects relating to the availability of the 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, unless otherwise approved by the New Zealand Fire Service.

Private Drainage Matters

- 13. Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.

Building control matters

- 14. Dunedin City Council Building Control Authority may ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1. Specific foundation design may subsequently be required.
- 15. Certain requirements for building on this site may be stipulated via the building consent process and are likely to include the following points:
 - Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - For sites level with or above the road, the finished floor level of any building is to be a minimum of 150mm above the crown of the road.

- For sites below the road, the finished floor level is to be no less than 150mm above the lowest point on the site boundary. Surface water is not to create a nuisance on any adjoining properties.
- For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
- As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.

Trade Waste

16. The applicant is advised to contact the Senior Education and Compliance Officer, Water and Waste Services, to discuss Trade Waste requirements.

Issued at Dunedin this 29th Day of November 2016



Lee Vandervis
Chair - Hearings Panel

(Scanned image, not to scale)



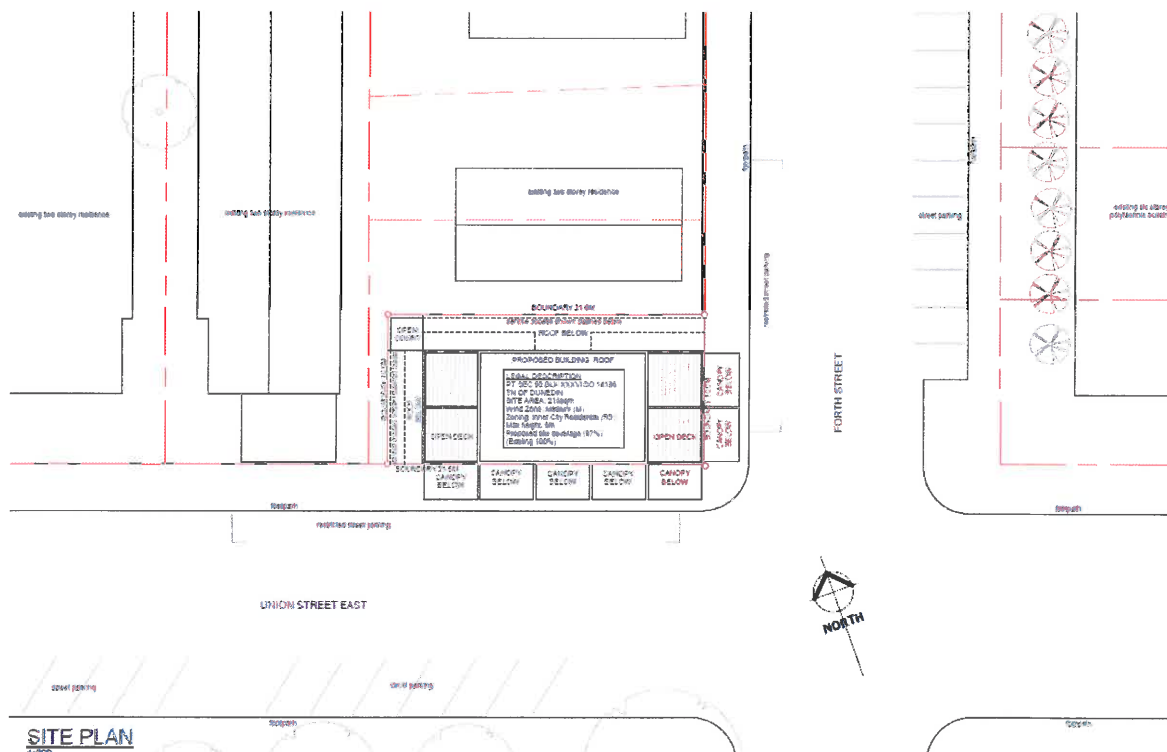
NZIA PRACTICE

Proposed Development - 138 Union Street East - Dunedin

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Project: 1050
Date: 18/10/2016
Drawn: Author



SITE PLAN

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Proposed Development - 138 Union Street East - Dunedin

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Page 05

Project:	1000
Date:	20/04/2014
Owner:	QTA

- WALL LEGEND**
- 100mm GSB wall (interior)
with insulation (as standing)
 - 100mm or 150mm thick
concrete/insulated panels
 - 200mm GSB masonry wall
forming with GSB wall
interior
 - 100mm GSB masonry wall
forming with GSB wall
interior (as standing)
- FLOORING LEGEND**
- New and existing
concrete screed paving
 - Interior polished concrete floor
with 100mm GSB (as standing)
 - Hard-wear tiles to utility/ingress

Ground Floor Area: 1264sqm
First Floor Area: 1550sqm
Second Floor Area: 1550sqm
Total Floor Area: 4774sqm

Note: All floors and basements to be the highest grade for other than parking areas. All floors and basements to be the highest grade for other than parking areas. All floors and basements to be the highest grade for other than parking areas.

GROUND FLOOR PLAN

1:100

GARY TODD ARCHITECTURE

NZIA PRACTICE

Proposed Development - 138 Union Street East - Dunedin

Page 07

- WALL LEGEND**
- 100mm GSB wall forming
with exterior wall forming
 - 100mm GSB masonry wall
forming with GSB wall
interior
- FLOORING LEGEND**
- Interior polished concrete floor
with 100mm GSB (as standing)

Ground Floor Area: 1264sqm
First Floor Area: 1550sqm
Second Floor Area: 1550sqm
Total Floor Area: 4774sqm

Note: All floors and basements to be the highest grade for other than parking areas. All floors and basements to be the highest grade for other than parking areas. All floors and basements to be the highest grade for other than parking areas.

FIRST FLOOR PLAN

1:100

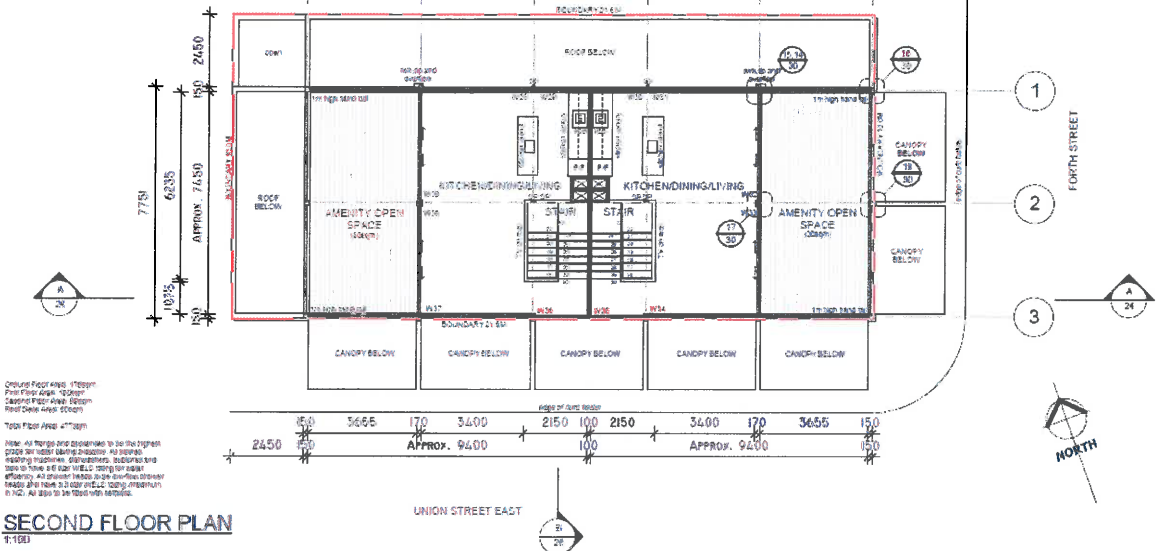
GARY TODD ARCHITECTURE

NZIA PRACTICE

Proposed Development - 138 Union Street East - Dunedin

Page 11

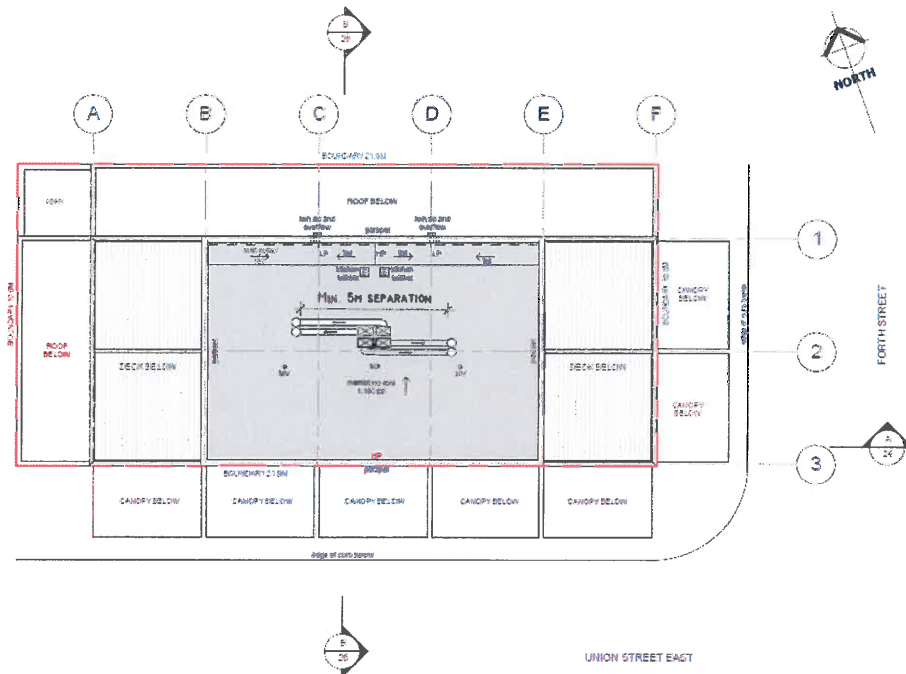
WALL LEGEND	
External Wall with cladding	—
External Wall with cladding	—
External Wall with cladding	—
External Wall with cladding	—
FLOORING LEGEND	
Internal Wall with cladding	□
Internal Wall with cladding	□
Internal Wall with cladding	□
Internal Wall with cladding	□

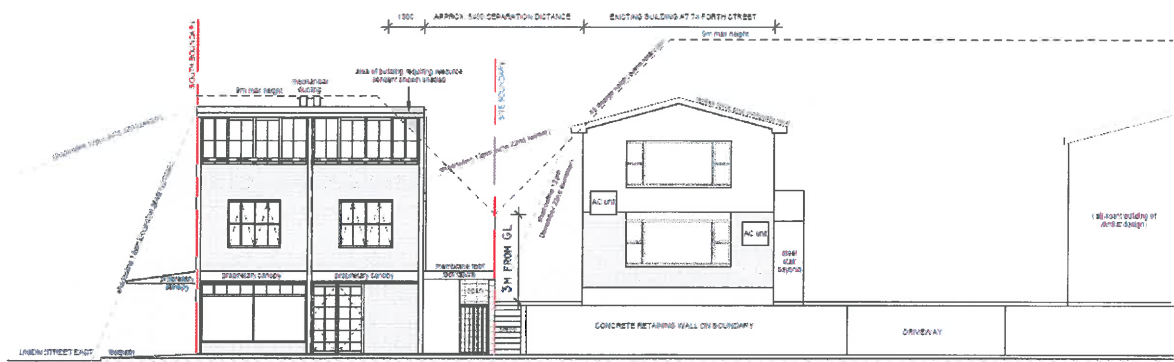


ROOFING MATERIALS	
Roofing Material	—
Roofing Material	—
Roofing Material	—
Roofing Material	—
LEGEND	
Roofing Material	—
Roofing Material	—
Roofing Material	—
Roofing Material	—

RELATIONS LEGEND	
Roofing Material	—
Roofing Material	—
Roofing Material	—
Roofing Material	—

Ground Floor Area: 1729sqm
First Floor Area: 1529sqm
Second Floor Area: 1529sqm
Total Floor Area: 4787sqm

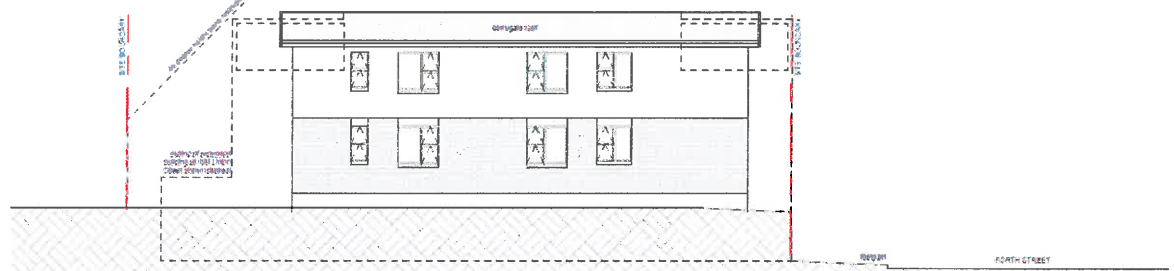




FORTH STREET ELEVATION

1:120

Area of building requiring resolution highlighted in blue



74 FORTH STREET SOUTH ELEVATION

1:120

GARY TODD ARCHITECTURE

101-103 Union Street East, Dunedin
03 477 1000
www.garytodd.co.nz

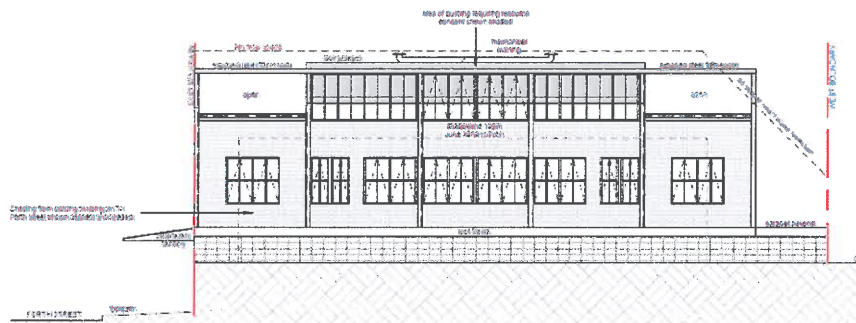
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Proposed Development - 135 Union Street East - Dunedin

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Project: 135
Date: 10/10/2014
Author:



NORTH ELEVATION WITH SHADOWS SHOWN CAST FROM 74 FORTH STREET

1:120

Area of building requiring resolution highlighted in blue

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