

## **HEARINGS COMMITTEE AGENDA**

**MONDAY, 29 JULY 2019, 9.00 AM**  
**Edinburgh Room, Municipal Chambers**

**MEMBERSHIP:** Commissioner Ros Day-Cleavin (Chairperson) and Councillors Jim O'Malley and Aaron Hawkins

**IN ATTENDANCE:** Phil Marshall (Senior Planner/Committee Advisor), Andrew Henderson (Consultant Planner), and Wendy Collard (Governance Support Officer)

### **PART A (Committee has the power to decide these matters):**

#### **1 RESOURCE CONSENT APPLICATION LUC 2018-669, 781 OUTRAM-MOSGIEL ROAD, OUTRAM**

##### **Introduction**

Applicant to introduce themselves and their team.

##### **Procedural Issues**

Any procedural matters to be raised.

##### **Presentation of the Planner's Report**

Report from Consultant Planner, Andrew Henderson  
Refer to pages 1 - 20

##### **The Applicant's Presentation**

Application  
Refer to pages 21 - 58

##### **Submissions**

Refer to pages 59 - 64

##### **Council Officer's Evidence**

- Email from Environmental Health Officer  
Refer to page 65 - 68
- Memorandum from Policy Analyst, 3 Waters  
Refer to pages 69 - 71
- Memorandum from MWH Hazards Team  
Refer to pages 72 – 74
- Memorandum from Otago Regional Council  
Refer to pages 75 - 79

##### **New Zealand Transport Agency (NZTA) Written Approval**

- Letter from NZTA  
Refer to page 80 - 83

##### **The Planner's Review of their Recommendation**

The Planner reviews their recommendation with consideration to the evidence presented

##### **The Applicant's Response**

The Applicant to present their right of reply

**PLEASE NOTE:** The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

## **RESOLUTION TO EXCLUDE THE PUBLIC**

To be moved:

**“That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.**

**The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:**

|   | <b>General subject of each matter to be considered.</b>               | <b>Reason for passing this resolution in relation to each matter.</b>                                              | <b>Ground(s) under section 48 for the passing of this resolution.</b> |
|---|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 1 | <b>Resource Consent application – 781 Outram-Mosgiel Road, Outram</b> | <b>That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.</b> | <b>Section 48(1)(d)</b>                                               |

**TO:** Hearings Panel

**FROM:** Andrew Henderson, Consultant Planner

**DATE:** 1 July 2019

**SUBJECT:** **RESOURCE CONSENT APPLICATION LUC-2018-669**  
**781 Outram-Mosgiel Road, Taieri**

## **1.0 INTRODUCTION**

- [1] This report has been prepared on the basis of information available in the application as lodged on 5 November 2018 and the further information received on 13 December 2018 and 4 February 2019 and 24 March 2019.
- [2] The purpose of the report is to provide a framework for the Commissioners' consideration of the application and the Commissioners are not bound by any comments made within the report. The Hearings Commissioners are required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

## **2.0 DESCRIPTION OF ACTIVITY**

- [3] SE and JK McArthur (The applicant) has applied to expand the range of goods offered at their fruit and vegetable stall, which is an existing Rural Retail Sales Activity. Consent is sought to allow for goods and produce not sourced from the site to be bought in and be sold. Consent is also sought to establish a residential dwelling on the site. The activity is described in detail in the application and associated Assessment of Effects on the Environment prepared by Cubitt Consulting, and the Commissioner is referred to that document and the further information received for a comprehensive description of the proposal. For the Commissioner's convenience, the application is summarised as follows:

- The current operation specialises in the production of raspberries, cauliflowers, lettuces, leeks and potatoes. It also contains a raspberry and strawberry plantation that occupies most of the site. Prior to the current operation, a dwelling was previously on the site. Resource consent was granted in 2004 (RM2004-0622) to allow for the sale of real fruit ice cream, which uses berries produced on site.
- The applicants seek to establish a residential activity on an undersized rural site. The residential dwelling is to be attached to the existing retail stall, and an existing cool store building is to be removed. Overall this will increase the footprint of built form from 85m<sup>2</sup> to 288m<sup>2</sup>. Decking around the proposed dwelling will add an additional 61m<sup>2</sup> of outdoor amenity space. The reason for this is so the applicants can live on site, and 'efficiently' run their business.
- The dwelling will be accessed from the existing car park, with a double garage at the car park level. The dwelling will be constructed on poles off the edge of the existing raised platform within the site (to be clear of the drainage channel), with the floor level approximately 600mm higher than the garage at around 12.18m above sea level.

- The retail of additional products will include:
  - > produce sourced from commercial market gardens in the area;
  - > produce sourced from non-economic but high-quality producers in the area;
  - > stone fruit from Central Otago;
  - > other non-commercially branded food produced in the area; and
  - > other local produce, such as homemade jams (from the applicants own berries), honey and eggs.
- The retail business currently operates seasonally. During the busy summer months (December-January), the stall is open 8:30am to 5:30pm, 7-days a week. These hours have traditionally reduced slightly during the February to April window but that may not occur under this proposal, with a wider range of products on offer. Over the summer period, up to 5 staff from the local community are employed.
- Access to the site is off State Highway 87 and will be improved and upgraded, in accordance with agreement reached with the New Zealand Transport Agency.

[4] Water supply and waste disposal is currently provided on the site.

### 3.0 DESCRIPTION OF SITE AND LOCATION

[5] The site is described in detail in the Assessment of Effects on the Environment prepared by Cubitt Consulting and this description is adopted for the purposes of this report. In summary, the site is located at 781 Outram-Mosgiel Road, Taieri. It is legally described as Lot 1 Deposited Plan 7443 and is held in Computer Freehold Register OT3B/175. It is in the rural zone in the Taieri Plains, sharing a boundary with State Highway 87 and in close proximity to the Taieri River and Outram Glen. Due to the site being used for horticulture, the wider property is classified as a HAIL site.

### 4.0 ACTIVITY STATUS

[6] Dunedin currently has two district plans, being the Operative Dunedin City District Plan (the Operative Plan) and the Proposed Second Generation Dunedin City District Plan (the Proposed Plan). Decisions on the Proposed Plan were released on 7 November 2018 and until such time as the Proposed Plan 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. The Objectives and Policies of both Plans also require consideration.

#### Dunedin City District Plan

The subject site is zoned **Rural** in the Operative Dunedin City District Plan. There are no designations registered against this site in the Operative District plan. The site is included within the Council's High-Class Soils overlay.

[7] Activities provided for within the Rural zone, and relevant to this area are set out in Rule 6.5.2 of the District Plan, and include:

- Farming activity; and
- Forestry activity;
- Recreational activity;
- Mineral Prospecting and Mineral Exploration; and
- Rural processing activity.

[8] The Rural Zone description notes that

*"As well as primary activities based on livestock, horticulture and forestry, various other activities are associated with the use of the resources of the rural area. These*

*activities include rural processing industries, factory farming, mining, recreation, tourism ventures and horse training and breeding. Rural processing industries include sawmills and dag crushing operations, whereas with respect to factory farming there are a number of piggeries and poultry farms...*

*Soil quality varies in the City, but there are approximately 12,000 ha of high class soils capable of being used intensively to produce a wide variety of plants including horticultural crops. The sustainability of the high class soil resource is at risk from the expansion of residential development."*

- [9] The neighbouring properties are within the Rural zone.
- [10] Rural Zone Rule 6.5.7(ii) states that any activity not specifically identified as permitted, controlled or discretionary by the rules in the zone or in the rules of Sections 17 to 22 of the Dunedin City District Plan is a **non-complying activity**.
- [11] Neither of the proposed activities (establishing a residential dwelling on a site with a minimum area of less than 15 ha or a commercial activity) are considered to be permitted, controlled or discretionary activities. In this respect the following definitions are of relevance.
- [12] The definition of "rural retail sales activity" within the plan means:
 

*"the use of land and buildings for the sale of produce direct to the public, from the property on which it was grown or handcrafted and other goods produced as a result of a home occupation operation on the same site."*
- [13] The definition of commercial activity within the plan means
 

*"the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or service and includes any Commercial Office or restaurant, and excludes service stations."*
- [14] The activities proposed by the Applicant (residential activity and rural retail sales) fail to comply with the regulations in the plan. Residential activity is only permitted in the Rural zone if the site has an area of at least 15 hectares (Rule 6.5.2(iii)) and complies with the bulk and location requirements. Rural retail sales from sites with access from a state highway are restricted discretionary activities within the Rural zone. However, where some of the produce is not produced on the site, the activity falls outside the ambit of a Rural retail Sales Activity and becomes a non-complying activity. As none of the activities are provided for as a permitted, controlled or discretionary activity in the Rural Rules therefore the application becomes a **non-complying** activity pursuant to Rule 6.5.7(ii) of the District Plan.

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

- [15] The Proposed 2GP was notified on 26 September 2015, and the closing date for submissions on the Plan was 24 November 2015. Decisions on the 2GP were released on 7 November 2018 and as such have legal effect. As the application was made prior to the release of the Decisions, the rules of the PDP do not apply to the proposal, although they are identified for completeness.
- [16] The Council's GIS does not identify any specific appeals that affect this site, although it is likely subject to the wider appeals against the Hazards overlay, and appeals against the policy that is concerned with residential density in the Rural zone.
- [17] The subject site is zoned Rural Taieri Plains in the proposed 2GP. The site is within a High Class Soil overlay, consistent with the ODP. Parts of the site are also located within the Hazard 1 – Flood overlay, and the 2GP rules require an additional consent for buildings within the Hazard 1 (Flood) Area. The site also falls within the wider Taieri Plains area overlain by the Otago Regional Council for the Lower Taieri Flood

Protection Scheme, and the Applicant has identified that the necessary regional; permits will be sought once the land use consent is determined.

- [18] The minimum site size for a dwelling (without subdivision) in the Taleri Plains zone is 25 hectares. While this rule is currently not operative, it does have legal effect, and this aspect of the proposal is non-complying under the PDP. As with the ODP, the retail activity falls outside the ambit of Rural Ancillary Retail and is therefore a commercial activity under this plan, which is non-complying.
- [19] Rural Ancillary Retail is defined as
- The use of land and buildings for the direct sale to the public of:*
- *Produce from the property on which it was grown; or*
  - *Other goods produced on the same property as part of a working from home activity.*
- [20] The proposed expansion of products to be sold in the store falls into 'all other activities' category. All other commercial activities, excluding those listed in the plan, is a non-complying activity in the rural zone and therefore this aspect of the application requires consent as a **non-complying** activity pursuant to Rule 16.3.3(42) of the Proposed District Plan District Plan.

#### Activity Status

- [21] Overall, the application is assessed as a **non-complying** activity.

#### NES for Assessing and Managing Contaminants in Soil to Protect Human Health

- [22] 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. With respect to HAIL regulations, as a horticulture site, the wider property will be classified as a HAIL site. In this context, however, the earthworks are limited to 25m<sup>3</sup> per 500m<sup>2</sup> under the NES. The NES rules are not triggered in this instance, however, given the likely presence of HAIL activities on the site in the past, and change in the potential earthworks on the site will likely require a further consent under the NES. As such, I agree with the Applicant that the NES is not relevant in this case.

### **5.0 NOTIFICATION AND SUBMISSIONS**

- [23] Written approvals were received from the NZ Transport Agency, following the applicant confirming that the application was amended to incorporate conditions to address the Transport Agency's requirements. These are:
1. *That the dwelling must be designed, constructed and maintained to achieve an indoor design noise level of 40dB  $L_{Aeq}(24hr)$  inside all habitable spaces.*
  2. *Prior to either receiving produce not grown on the site; or prior to the construction of the proposed dwelling, the following improvements to State Highway 87 and the site access at Crossing Place 31 shall be completed:*
  3. *The consent holder shall upgrade and maintain Crossing Place 31, in accordance with the NZ Transport Agency's Planning Policy Manual Full Diagram E standard, with a minimum radius of 15m, and culverts and drainage as required.*
- [24] The application was publicly notified on 27 March 2019.

- [25] Two submissions were received and are summarised below. Full copies are attached in Appendix A. Neither submitter wished to be heard.

| <b><u>Submitter</u></b> | <b><u>Address</u></b>      | <b><u>Comments</u></b>                                                                   | <b><u>Decision Sought</u></b> |
|-------------------------|----------------------------|------------------------------------------------------------------------------------------|-------------------------------|
| Kate Botting            | 749 Outram-Mosgiel Road    | Supports application                                                                     | Grant Consent                 |
| Angela Young            | 43 Skerries Street, Outram | Supports application as important for community to have access to locally grown produce. | Grant Consent                 |

## 6.0 ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [26] 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.*
- [27] Case law has defined that there are three elements to determining a permitted base line for the subject site. They are:
- Existing lawful use of the site
  - Activities permitted as of right by the District Plan
  - Any existing, but unimplemented resource consent applications for the site.
- [28] The assessment of effects is guided by Sections 4 (Sustainability), 6 (Rural Zone), 19.6 (Signs) and 20.6 (Transportation), and 21 Environmental Issues of the Operative District Plan and Sections 2 (Strategic Directions), 6 (Transportation), 8A (Earthworks), 14 (Manawhenua) and 16 (Rural) of the Proposed District Plan. Accordingly, assessment is made of the following effects of the proposal:
- Baseline considerations
  - Sustainability
  - Bulk, Location;
  - Amenity Values
  - Intensity of Operation
  - Transportation
  - Infrastructure
  - Signage
  - Hazards
  - Cumulative Effects
  - Reverse Sensitivity
  - Cultural Effects
  - Other matters
  - 2GP

### Written Approvals

- [29] As identified above, the Applicant has provided written approvals from the Transport Agency, and accordingly effects on this party cannot be considered pursuant to section 104(3)(a)(ii) of the Act.

#### Baseline Considerations

- [30] The starting point for the assessment of effects is the environment on the site as it currently exists. Consideration also needs to be given to the future development on the site that is currently authorised or allowed as of right.
- [31] The future environment on the site can include activities permitted by the District Plan. It can also potentially include resource consents that have been granted but not yet implemented. The application of the "permitted baseline test" is at the Committee's discretion and allows the effects of a proposal to be compared to permitted activities that could be carried out on the site without a resource consent (Section 104 etc).
- [32] There is one resource consent currently held against this site (RM2004-0622). This consent was granted to allow for the production and sale of 'real fruit ice cream'. This is sold alongside other produce also grown on site. The stall in which it is sold is an 85m<sup>2</sup> retail outlet. It is noted in the application that prior to the stall being on the site, there was a residential dwelling on the site. However, this has been absent from the site for many years, and any existing use rights are considered to be extinguished. There is no relevant permitted baseline for residential activity in either plan, as both anticipate residential activity on significantly larger sites.
- [33] I have reviewed the Applicant's AEE and agree that the effects requiring consideration are as follows:
- > High Class Soils/Productive Potential of Rural Land
  - > Rural Amenity Values
  - > intensity of Activity
  - > Transportation Effects
  - > Conflict and Reverse sensitivity Effects
  - > Hazards, HAIL issues and Earthworks

- [34] I also consider that positive effects are relevant.

- [35] Each of these effects are considered further below.

#### High Class Soils / Productive Potential of Rural Land

- [36] The site is identified as having High Class Soils. However, as identified in the Application, the existing retail outlet and the site of the proposed dwelling are both outside of the area identified as containing the High Class Soils. I agree with the Applicant's AEE that the proposal therefore has no effect on the High Class Soils or the rural productivity values of the site.

#### Rural Amenity Values

- [37] The principal amenity effects arising from the proposal relate to the effects of the residential activity on the rural zone, particularly given that the property is below the minimum area upon which residential activity is ordinarily supported in the rural zone, and the effects of the additional retail activity.
- [38] Both the Operative and Proposed Plan anticipate residential activity in the Rural Zone at a lower density than the proposed site. The subject site is small and has existed at this size for many years. As identified in the Applicant's AEE, the key element of an assessment of the effects an activity on rural amenity is the impact it will have on the receiving environment. The site is small and in keeping with what might normally be expected of a rural residential type development; however, it is the Applicant's view that the proposal has been designed to ensure that the site remains in productive rural use.



- [39] With respect to the surrounding properties and the wider receiving environment, the neighbouring property at 799 Outram-Mosgiel Road is 2.3 hectares in area, similar to the subject site, and activity on smaller sites is not uncommon. It is noted in this regard that although the site is small, the small retail activity has been undertaken from the site for many decades, and at one stage a residential dwelling formed part of the activity on the site. The previous location of a dwelling on the site does not imply any form of existing use right, and I note that the applicant is not claiming this.
- [40] Much of the site is used as a berry farm, and in that sense contains a productive rural use, which forms part of the rural amenity of the site and surrounding area. I accept the applicant's view that the proposal has been designed to maintain this rural use, as the additional building on the site will be attached to the existing built form, and avoiding the high class soils on the site, as well as not taking additional productive land.
- [41] The proposed development results in minor encroachments of the yards required for development on the site. I note that the application of the yard rules is based upon a general rural property that is significantly larger than the existing site, and therefore some element of non-compliance is not unexpected, particularly when there are already established buildings on the site. However, I do not consider these breaches to be significant, and agree with the Applicant's AEE that there will be no adverse effects on the amenity of adjoining properties arising from the proposal. The proposed extensions, and the dwelling, will be viewed within the context of the existing activity on the site, and overall any adverse effects on rural amenity will not be more than minor.

#### Effects of Bulk and Location

- [42] One building is proposed, being the residential dwelling. Although this has a relatively large footprint (approximately 170m<sup>2</sup>), I consider that this will not dominate the site given the overall size of the site. The proposed buildings have a low elevation (i.e. a maximum of 3.9m high), and I do not consider that these will have any significant effect on the surrounding properties or wider area. I note that the NZTA has provided approval in respect of effects on traffic safety, which indicates that they do not consider the buildings or associated traffic movements will give rise to any effects on traffic safety. Given the angle at which the site itself may be viewed by users of the highway, the short distance over which the site may be visible and the speed of passing vehicles, I do not consider that the proposed buildings will give rise to any adverse visual effects when viewed from the State highway or surrounding roads. Overall I consider that there will be no significant adverse effects arising from the proposed building.

#### Intensity of Operation

- [43] The proposed retail activity will be the same as its current operating hours proposed between 8.30am to 5.30pm, 7 days a week. In this application, written approval has been obtained from the operator of the State Highway network. Accordingly, adverse effects on these parties must be disregarded. No other parties will be adversely affected by the proposed activity given the separation between the site and properties further afield, and I therefore consider that the adverse effects relating to the intensity of the operation will be no more than minor. In this regard I also note that the adjoining property owner has made a submission in support of the proposal.

#### Transportation

- [44] Outram-Mosgiel Road (State Highway 87) is classified as a National Road (Limited Access) under the District Plan's Roading Hierarchy, and as a Strategic Road in the 2GP's Road Classification Hierarchy. The Transport Agency is the Road Controlling Authority (RCA) for Outram-Mosgiel Road.
- [45] In assessing the Transport related effects of the proposal I note that the NZ Transport Agency has provided written approval in respect of actual and potential effects on the

State Highway, and accordingly effects on the highway cannot be considered pursuant to section 104(3)(a)(ii) of the Act.

- [46] The applicant proposes to maintain onsite car parks. The site is large and additional parking can be provided behind the store if necessary. The carparking currently on site and the proposed entrance to the garage will be separated by a fence. The parking is considered appropriate, and the fact that the Transport Agency has provided written approval indicates that no issues are anticipated with respect to vehicles entering or exiting the site.
- [47] With respect to traffic generation, the application says that by allowing the residential dwelling on site, vehicle movements to and from the site could actually decrease, as those residing and working on the site will not be required to come and go on a daily basis. I consider this to be a positive effect, although minor.

#### Access to Infrastructure

- [48] The application identifies that

*The current activity on the site is self-serviced for water supply and waste disposal. The increase in activity on the site may see the need for this infrastructure to be upgraded but we do not envisage there will be any greater effect on the environment as a result.*

- [49] No Council services are required for the proposed development given its rural nature. The applicant has confirmed that any required services will be provided and upgraded if required, and it will be appropriate that conditions of consent, if granted, are imposed to require that the appropriate services be provided prior to the commencement of the activities for which consent is sought

#### Hazards/Earthworks

- [50] Part of the site is identified has a Hazard 1-Flood Zone and is designated by the ORC for its "Lower Taieri Flood Protection Scheme". The building site however, is clear of these, with the dwelling proposed to be constructed on poles to avoid ponding areas. The Otago Regional Council did not make a submission on the application, but correspondence provided from the Applicant has confirmed that:

- *The July 2017 flood event is on record as one of the largest Taieri floods in terms of volume of floodwater. The river flow peaked at about 2000 cumecs.*
- *Immediately following that flood event, Terramark was contracted by the ORC to survey the debris line. Our survey records disclose that the debris reduced level in the vicinity of the Applicant's shop/house site, was 10.5m (Dunedin Vertical Datum).*
- *The shop has a floor level of 12.3m, some 1.8m above that flood level. The proposed house will also have a floor level of 12.3m, designed to ensure that flood water will not enter the building.*

- [51] The Applicant has also noted to the ORC that it will seek any required approvals upon granting of the land use consent. No submission was made by the ORC opposing the proposed development, and the ORC has confirmed that at this present time it has nothing further to add to the process.

- [52] Based on the above I consider that there will be no adverse effects arising from natural hazards, and the proposal complies with the relevant rules regarding floor levels. Should consent be granted, I consider that conditions should be imposed requiring that at the time Building Consent is sought, the applicant must provide plans and specifications sufficient to demonstrate that the house design has been considered relative to the recorded flood levels.

- [53] Due to the HAIL status of the site, earthworks are restricted to 5m<sup>3</sup> per 500<sup>2</sup> under the NES. The ODP restricts earthworks to a 2m change in ground level and a volume of 200m<sup>3</sup>. The proposal does not breach these levels and I therefore consider there will be no adverse effects that are more than minor arising from natural hazards.

#### Cultural Effects

- [54] Consent is sought to increase the amount of building from on a site that has historically been used for the sale of rural produce. There are no significant excavations, and overall I do not consider there will be any adverse cultural effects arising from the proposal. I also note that no submission was made by takata whenua.

#### Cumulative effects

- [55] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

*"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".*

- [56] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [57] The establishment of commercial and residential activities outside of those zones specifically identified for that type of activity can potentially erode the values associated with those zones and the framework of the Plan. In this particular case, however, I consider that the proposal will result in a small addition to the existing activity on the site. It is not introducing new activity, and the small addition, as well as the residential activity, will not erode the rural amenity of the surrounding area.
- [58] I also note that there are other undersized rural allotments in the area. Directly adjoining the site to the west, 799 Outram-Mosgiel Road is 2.3 hectares in size, while just across the bridge, 52 Mountford Street is only 3,246m<sup>2</sup>. To the east is 720 Outram-Mosgiel Road at 4047m<sup>2</sup> and 663 Outram-Mosgiel Road is 3335m<sup>2</sup>. It is important to note that the proposal is not creating an undersized rural allotment, it is seeking to make efficient use of the site that presently exists, and that has supported a small retail operation selling rural produce for many years.

#### Reverse Sensitivity

- [59] 'Reverse sensitivity' relates to the situation whereby the introduction of activities with sensitivity to existing and permitted operators in an area results in the new activities seeking to impose restrictions upon the established activities. In this case, however, given that the existing activity is rural in nature, I consider it unlikely that the rural neighbours would experience any reverse sensitivity effects from the proposed residential activity.

#### Summary of Effects

- [60] Overall, having considered the actual and potential effects of the proposal, I consider that with appropriate conditions in place there will be no adverse effects that are more than minor. I therefore consider that the proposal satisfies the first threshold test of section 104(1)(a) of the Act.

## **7.0 OBJECTIVES AND POLICIES ASSESSMENT**

- [61] Section 104(1)(b)(iv), the second limb of the non-complying activity test, requires that the application will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan. In the assessment below, I assess the proposal against the relevant provisions of the plan and identify whether, in my view,

It is contrary to them. I also identify where I consider the application may be consistent with the provisions, but not to the extent it can be determined to be contrary,

### 7.1 **Assessment of Objectives and Policies of the Operative District Plan**

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

| Objective/Policy                                                                                                                | Assessment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Sustainability Section</b>                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Objective 4.2.1</b><br>Enhance the amenity values of Dunedin.                                                                | The primary tool that the Council uses to manage the amenity values of Dunedin is the zoning framework of the Plan, which essentially provides for the aggregation of activities with similar effect into common areas, such as industrial zones or residential zones. One factor in amenity is the distinction between the zones, as the mixing of activities can have any adverse effects on the overall amenity expectations within each zone and the City as a whole. The proposal has been determined above to have adverse effects that are no more than minor. I note that the proposal is adding built form to an existing activity on the site and as such the proposal is not introducing buildings to a vacant rural lot. Although the proposal includes a small residential activity on the site, given this is located adjacent to the existing built form, I do not consider that the proposal will adversely affect the amenity values of the City. While there may be some inconsistency as a result of the policies regarding the location of residential activities on undersize rural allotments, overall I consider that the proposal is <b>not contrary</b> to these provisions. |
| <b>Policy 4.3.1</b><br>Maintain and enhance amenity values.                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Objective 4.2.3</b><br>Sustainably manage infrastructure                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Policy 4.3.5</b><br>Require the provision of infrastructure services at an appropriate standard.                             | On site stormwater and waste water disposal is proposed, and potable water is to be provided to the site. The proposal is <b>not contrary</b> to these provisions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Objective 4.2.5</b><br>Provide a comprehensive planning framework to manage the effects of use and development of resources. | This Policy is a structural policy that indicates how the Council will manage the effects of the use and development of resources in the District. As mentioned above, the planning framework revolves around the use of zoning. While I consider that the proposal is <b>inconsistent</b> with the planning framework of the Plan, as it seeks to establish retail and residential activities into the Rural zone that are not within the scope of activities permitted in the zone, it is <b>not contrary</b> to them on the basis that the structure of the Plan allows for applications to be made for non-complying activities. I also consider that the proposal is an efficient use of the rural resources available to a small rural lot.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Policy 4.3.7</b><br>Use zoning to provide for uses and developments which are compatible within identified areas.            | I consider that the development is not inconsistent with the intent of these provisions. The retail and residential activities are not incompatible with each other, particularly given that the dwelling forms part of the management                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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| <b>Policy 4.3.8</b><br>Avoid the indiscriminate mixing of incompatible uses and developments.                                                                                                                      | of the site. The proposal is <b>not contrary</b> to these provisions.                                                                                                                                                                                                                                                                      |
| <b>Policy 4.3.10</b><br>Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.                                                                          |                                                                                                                                                                                                                                                                                                                                            |
| <b>Rural Section</b>                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                            |
| <b>Objective 6.2.2</b><br>Maintain and enhance the amenity values associated with the character of the rural area.                                                                                                 | The proposal will introduce residential activity and additional retail activities to the site. As identified in the Assessment of Effect above, overall I do not consider that the proposal will adversely affect the character of the rural area, and such I consider that the proposal is <b>not contrary</b> to this provision.         |
| <b>Objective 6.2.4</b><br>Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.                                 | No adverse effects relating to infrastructure or roading have been identified. The proposal is <b>not contrary</b> to this Policy.                                                                                                                                                                                                         |
| <b>Objective 6.2.5</b><br>Avoid or minimise conflict between different land use activities in rural areas.                                                                                                         | The proposed activities will not conflict with other activities in the rural zone. On this basis I consider the proposal is <b>not contrary</b> to this provision.                                                                                                                                                                         |
| <b>Policy 6.3.1</b><br>Provide for activities based on the productive use of rural land.                                                                                                                           | The proposal is partly based on the productive use of rural land, noting that it provides for the sale of rurally-produced products to the public. Establishment of a dwelling adds to this purpose by allowing management to live on site, and provide enhanced security after hours. The proposal is <b>not contrary</b> this provision. |
| <b>Policy 6.3.2</b><br>Sustain the productive capacity of the Rural Zone by controlling the adverse effects of activities.                                                                                         | The productive capacity of this site will not be reduced by the proposed activity. I consider the proposal is <b>not contrary</b> to this provision.                                                                                                                                                                                       |
| <b>Policy 6.3.6</b><br>Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.                                                               | The proposed buildings are appropriately located and set back from site boundaries such that activities on the adjoining properties are not affected. As such the proposal is <b>not contrary</b> to this policy.                                                                                                                          |
| <b>Policy 6.3.8</b><br>Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network. | No adverse effects relating to infrastructure or roading have been identified. The proposal is <b>not contrary</b> to this Policy.                                                                                                                                                                                                         |
| <b>Policy 6.3.10</b><br>Protect areas that contain 'high class soils', as shown on District Plan Maps 75, 76 and 77, in a way which sustains the productive capacity of the land.                                  | Although High Class Soils are shown over some of the property, they will not be affected by the proposal as no works are to be undertaken on areas where the soils are present. The proposal is therefore <b>not contrary</b> to this policy.                                                                                              |

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| <b>Policy 6.3.11</b><br>Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.                                                              | The sale of rural produce in the rural zone is considered appropriate, although it is acknowledged that not all of the material being sold will be produced on the site is produced there. However, there are few rural sites that sell direct to the public in the area, and no adverse effects of the proposal have been identified. As such, it is considered that the proposal is <b>not contrary</b> to this policy. |
| <b>Policy 6.3.12</b><br>Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities. | The proposal will not conflict with the adjoining properties. The proposal will not reduce the ability of the site to be used for productive purposes or other productive rural activities. The proposal <b>not contrary</b> to these provisions.                                                                                                                                                                         |
| <b>Transportation Section</b>                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Objective 20.2.2</b><br>Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.                                                                | The New Zealand Transport Agency has provided written approval to the proposal and overall it is considered that the proposal is <b>not contrary</b> to these objectives and policies.                                                                                                                                                                                                                                    |
| <b>Objective 20.2.4</b><br>Maintain and enhance a safe, efficient and effective transportation network.                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Policy 20.3.4</b><br>Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Policy 20.3.5</b><br>Ensure safe standards for vehicle access.                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Policy 20.3.8</b><br>Provide for the safe interaction of pedestrians and vehicles.                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Environmental Issues Section</b>                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Objective 21.2.2</b><br>Ensure that noise associated with the development of resources and the carrying out of activities does not affected public health and amenity values.                                                        | Effects relating to noise and glare can be managed through conditions of consent and the proposal therefore is <b>not contrary</b> to these provisions.                                                                                                                                                                                                                                                                   |
| <b>Policy 21.3.3</b><br>Protect people and communities from noise and glare which could impact upon health, safety and amenity.                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                           |

- [63] The key objectives and policies to consider when assessing this application relate to the Sustainability section and the Rural section of the District Plan. The proposal is **not contrary** to key provisions of these sections and therefore consider overall that it is not contrary to the objectives and policies of the Operative District Plan.

## 7.2 Assessment of Objectives and Policies of the Proposed District Plan

### Rural Strategic directions, objectives and policies

| Objective/policy                            | Assessment                                        |
|---------------------------------------------|---------------------------------------------------|
| <b>Objective 2.3.1: Land and facilities</b> | The site is considered to be productive land. The |

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| <p><b>important for economic productivity and social well-being</b><br/>Land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land are:</p> <p>a. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity...</p>                   | <p>proposal will not however give rise to competing land uses or create reverse sensitivity issues, and overall the proposal is <b>not contrary</b> to this provision.</p>                                                                                                                                                                                                                                        |
| <p><b>Policy 2.3.1.2</b><br/>Maintain or enhance the productivity of farming and other activities that support the rural economy through:</p> <p>b rules that provide for rural industry and other activities that support the rural economy...</p> <p>h. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location or support rural activities.</p>                                                 | <p>The proposal is for a retail activity that sells produce derived from the rural zone, and in that respect it supports the rural economy. Locating the residential activity on the site enhances the ability of the owners to maintain the site, be located close to the activities undertaken on the site and provide increased security. The proposal is therefore <b>not contrary</b> to this provision.</p> |
| <p><b>Objective 16.2.1</b><br/>Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.</p> | <p>It is considered that the proposal is <b>not contrary</b> to this objective. The proposed extension to the retail activity is a productive rural activity, and in this instance I consider that the residential activity directly supports the rural activity on the site. I agree with the Applicant's assessment of this provision.</p>                                                                      |
| <p><b>Policy 16.2.1.3</b><br/>Provide for rural activities, veterinary services, rural industry, rural contractor and transport depots, community activities, emergency services, cemeteries and crematoriums in the rural zones where the effects will be adequately managed in line with objectives 16.2.2 and 16.2.3, 16.2.4 and their policies, and the objectives and policies of any relevant overlay zones</p>                                                | <p>The proposal is <b>not contrary</b> to this policy.</p>                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Policy 16.2.1.7</b><br/>Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.</p>                                                                                                                                                                                                                                                   | <p>The proposal seeks to establish a residential activity on an undersized site in the Rural Zone. This is a strongly worded policy and case law has determined that 'avoid' effectively means to not allow an activity. I note that the Policy is under appeal, but nonetheless the proposal is <b>contrary</b> to this Policy.</p>                                                                              |
| <p><b>Objective 16.2.2</b><br/>The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure:</p>                                                                                                                                                                                                                                   | <p>The proposal will not give rise to reverse sensitivity effects. I consider that the proposal is <b>not contrary</b> to this provision.</p>                                                                                                                                                                                                                                                                     |

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| <ul style="list-style-type: none"> <li>a. the potential for reverse sensitivity in the rural zones is minimised;</li> <li>b. the residential character and amenity of adjoining residential zones is maintained; and</li> <li>c. a reasonable level of amenity for residential activities in the rural zones.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>Objective 16.2.3</b><br/>The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include:</p> <ul style="list-style-type: none"> <li>a. a predominance of natural features over human made features;</li> <li>b. a high ratio of open space, low levels of artificial light, and a low density of buildings and structures;</li> <li>c. buildings that are rural in nature, scale and design, such as barns and sheds;</li> <li>d. a low density of residential activity, which is associated with rural activities;</li> <li>e. a high proportion of land containing farmed animals, pasture, crops, and forestry;</li> <li>f. extensive areas of indigenous vegetation and habitats for indigenous fauna; and</li> <li>g. other elements as described in the character descriptions of each rural zone located in Appendix A7.</li> </ul> | <p>The proposal will introduce additional rural retail activities to the site and introduce residential activity. The site is small and therefore does not exhibit the same rural characteristics as typical, large scale rural sites, and must be considered in this context. The rural character of the site and surrounding environment will be maintained and overall I consider the proposal is <b>not contrary</b> to this provision.</p>                                                                                                                                                                                                                                                                                                                                    |
| <p><b>Policy 16.2.3.1</b><br/>Require buildings and structures to be set back from site boundaries and of a height that maintains the rural character values and visual amenity of the rural zones.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>The proposal is <b>not contrary</b> to this policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Objective 16.2.4</b><br/>The productivity of rural activities in the rural zones is maintained or enhanced.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>The proposal is <b>not contrary</b> to this provision.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>Policy 16.2.4.4</b><br/>Avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>The residential activity proposed is on a small site and as such the density is higher than ordinarily allowed for. However, this density will not affect the productivity of the site, and does not displace any other rural activity. I note the Applicant's view that the proposal will provide for the sustainability of the existing productive use on the site. I consider the proposal is <b>not contrary</b> to this provision. I also note that this policy does not appear to directly align with Policy 16.2.1.7, which seeks to avoid residential activity that does not comply with the density standards of the zone. However, Policy 16.2.4.4 appears to anticipate residential activity at a higher density if it does not displace rural activities, which</p> |



|  |                                                                |
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|  | appears to be a more permissive approach than Policy 16.2.1.7. |
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### Natural Hazards objectives and policies

| Objective/policy                                                                                                                                                                                                                                                                                                                         | Consideration                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>Objective 11.2.1</b><br>Land use and development is located and designed in a way that ensures that the risk from natural hazards, including climate change, is no more than low, in the short to long term.                                                                                                                          | The proposal is therefore <b>not contrary</b> to the Hazards provisions. |
| <b>Policy 11.2.1.4</b><br>In the hazard 1, hazard 1A and 2 (flood) overlay zones, only allow new buildings, and additions and alterations to buildings, where the scale, location and design of the building or other factors mean risk is avoided, or is no more than low.                                                              |                                                                          |
| <b>Policy 11.2.1.14</b><br>Require buildings, structures, storage and use of hazardous substances, network utility activities, and earthworks - large scale to be set back an adequate distance from water bodies to ensure that the risk from natural hazards, including from erosion and flooding, is avoided, or is no more than low. |                                                                          |

- [64] Overall, while the proposal is not contrary to some of the provisions, such as those relating to Manawhenua and Hazards, I consider that it is contrary to key policies relating to the Rural zone in particular.
- [65] Decisions have been released on the 2GP, and the appeal period ended on 19 December 2018. I note that Policy 16.2.1.7, relating to the density of development in the Rural zone, has been appealed. I have also noted that this Policy appears to be somewhat challenged by Policy 16.2.4.4, which appears to anticipate some residential development at higher densities.
- [66] The Rural provisions of the Proposed 2GP are consistent with the Operative Plan and solidify the approach that has been taken to activities that are not provided for rather than change approach. Given there is little difference between the Plans, I consider that the matter of weighting is less significant than it would be had the 2GP introduced a more permissive approach.
- [67] On the basis that the Policies of the Proposed Plan are consistent with the approach taken in the Operative Plan, I consider that weight should be given to the Proposed Plan, noting however the issue between the two relevant policies identified above.

### **Assessment of Regional Policy Statements (section 104(1)(b)(iii))**

#### **Operative Regional Policy Statement**

- [68] Section 104(1)(b)(iii) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998, and parts of the Proposed Regional Policy Statement were made operative in late 2018. Given their overarching regional focus, neither the Operative nor Proposed Regional Policy Statement have a great bearing on the current application and I do not consider the proposal to be contrary to their provisions.

## DECISION MAKING FRAMEWORK

### Part 2 Matters

- [69] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This has been confirmed in the recent Court of Appeal decision (*RJ Davidson Family Trust v Marlborough District Council*) where it was determined that Part 2 is relevant to the consideration of resource consents. This includes therefore the ability of the proposal to meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Furthermore, the matters of national importance in section 6 must be recognised and provided for, and particular regard must be had to the matters listed in section 7.
- [70] Of particular relevance to this application are sections 5(2)(a) "*sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations*", 5(2)(c) "*avoiding, remedying or mitigating any adverse effects of activities on the environment*", 7(b) "*the efficient use and development of natural and physical resources*" and 7(c) relating to amenity values.
- [71] As discussed in the assessment of effects above, the proposal is consistent with the Plan's approach to the sustainable management of the Rural zone, particularly as expressed through the objectives and policies, and on that basis I consider the proposal to be consistent with the purpose of the Act as outlined in section 5 of that legislation.
- [72] Having regard to section 6 of the Act, section 6(h) requires the management of significant risks from natural hazards. The proposal satisfies this section.
- [73] Having regard to section 7(b), the proposed development is considered to be an efficient use of an undersized rural lot.
- [74] In regard to section 7(c), I consider that the proposal will maintain the amenity values of the area insofar as they are experienced by surrounding properties. The amenity values of the wider environment will not be adversely affected.
- [75] With regard to section 7(f), the proposal is unlikely to change the quality of the existing environment. The site is already modified by the presence of the retail activity, and the additional built form will not have any adverse effects beyond the boundary of the site.

### True exception (s104(1)(c))

- [76] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and integrity are considered relevant. These have been matters considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC (C92/2003)* has demonstrated that when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council is required to apply the 'true exception test'.
- [77] In paragraph 11 of the decision Judge Smith stated "*we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique*". This was added to in paragraph 20 where the Judge stated, "*therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone.*"
- [78] Consent is sought to extend the retail activity undertaken on the site and to introduce a residential I activity onto a small rural lot. Both the Operative and Proposed District

Plans zone the site for rural purposes, and both have policies that discourage the establishment of non-rural activities. I consider that the proposal has specific characteristics that would enable it to be considered as a unique activity or a true exception to the zone provisions, specifically:

- > The site is a small, existing rural lot and no subdivision is proposed that would further fragment the rural zone.
- > There is an established retail activity on the site that has operated for a number of decades. There are few roadside stalls such as this on the Taieri Plains and there are positive effects for the community associated with the proposal.
- > The residential activity will support the existing retail activity and provide additional opportunities for security and on site management of the operation.

[79] The proposal should be assessed as to whether it challenges the integrity of the Plan and sets an undesirable perceived precedent, or whether it is a 'true exception' that takes it outside the generality of the plan and the zone.

[80] Non-complying activities have the potential to create an adverse precedent, which may challenge the integrity of the Plan by effectively providing for activities the Plan seeks to avoid in particular areas. In my opinion, for the reasons as expressed above, I consider that the proposal can be considered a "true exception". In this regard, I consider that the proposed activity does not challenge the integrity of the District Plan.

#### Section 104D

[81] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.

[82] This report earlier assessed the environmental effects of the proposal and concluded that, the adverse effects on the environment are likely to be no more than minor given the receiving environment of the proposal. Overall, I consider that the actual and potential effects associated with the proposed development are likely to be minor and the first 'gateway' test of section 104D is met. Only one of the two tests outlined by section 104D need be met in order for the Council to be able to assess the application under section 104(1)(a) of the Act.

[83] Nevertheless, and for completeness, it is noted that Section 104(1)(b)(iv) requires regard to be had to any relevant objectives and policies of a plan or proposed plan. As identified in this report, I consider that the application would, overall, not be contrary with key objectives and policies of both the Operative and Proposed District Plans and, as such, the proposal is considered to satisfy the second 'gateway' test outlined by section 104D.

[84] Recent case law has required that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.

[85] In summary, I consider that the application passes both the threshold tests in section 104D of the Act, and therefore, consideration can therefore be given to the granting of the consent.

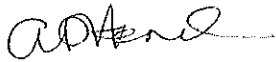
#### Conclusion and Recommendation

[86] Having regard to the decision making framework overall, I consider that the proposal is not contrary to the key objectives and policies of both Plans in relation to the expected activities in the Rural zone, and will not potentially undermine the integrity of the Second Generation District Plan. As such I recommend that the application be granted.

**REASONS FOR RECOMMENDATION**

1. The proposal is not contrary to key relevant objectives and policies of both the Operative and the Proposed District Plans.
2. The proposal is not contrary to the objectives and policies of the Regional Policy Statement for Otago.
3. The proposal will produce effects on the environment that are considered to be no more than minor with appropriate conditions in place.
4. The proposal is considered to be generally consistent with the Part 2 matters of the Resource Management Act 1991.
5. The proposal is considered to be a true exception in this instance.
6. The proposal is not likely to create an undesirable precedent.

Report prepared by:



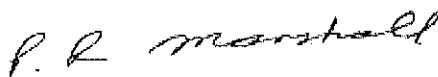
Andrew Henderson

**Consultant Planner**

1 July 2019

Date

Report checked by:



Phil Marshall

**Senior Planner**

2 July 2019

Date

**POSSIBLE CONDITIONS**

**Recommended conditions of consent**  
**UPDATED – 1 July 2019**

**GENERAL:**

1. All works and activities under this consent shall be carried out in general accordance with the consent application received by the Council on 5 November 2018 and modified on 13 December 2018, 4 February 2019 and 24 March 2019, except where modified below.
2. The consent holder is liable for the Council's costs associated with the monitoring of this resource consent under Section 35 of the Resource Management Act 1991.
3. Hours of operation for the retail activity authorised under this consent are restricted to 8.30am to 5.30pm, 7 days per week.
4. Within ten working days of each anniversary of the date of this decision the Council may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this resource consent for any of the following purposes:
  - a. to deal with any adverse effects on the environment that may arise from the exercise of the consent which were not foreseen at the time the application was considered and which it is appropriate to deal with at a later stage;
  - b. to deal with any adverse effects on the environment which may arise from the exercise of the consent and which could not be properly assessed at the time the application was considered; and
  - c. to avoid, remedy and mitigate any adverse effects on the environment which may arise from the exercise of the consent and which have been caused by a change in circumstances or which may be more appropriately addressed as a result of a change in circumstances, such that the conditions of this resource consent are no longer appropriate in terms of the purpose of the Resource Management Act 1991.
5. The site design shall ensure that overland stormwater flow paths are not materially interrupted, and any permanent structures should be situated so as to avoid any adverse effects from local ponding during storm rainfall events.
6. All aspects relating to the availability of the water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies.
7. Prior to occupation of the residential dwelling, the consent holder shall provide 45,000 litres of on-site water supply in accordance with the Council's standards.
8. There are no stormwater infrastructure or kerb and channel discharge points in the Rural zone. Disposal of stormwater is therefore to water tables and/or watercourses onsite, or to suitably designed onsite soak-away infiltration system or rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.
9. Effluent shall be disposed of a septic tank and effluent disposal system that is to be designed by an approved septic tank and effluent disposal system designer. The wastewater disposal system installed shall be appropriate for the soil conditions in the area, with the disposal area located a minimum of 50 metres from any waterway. The on site wastewater disposal system must be serviced regularly recording the time, date and any maintenance undertaken, with these details provided to the Dunedin City Council on request.

10. That the dwelling must be designed, constructed and maintained to achieve an indoor design noise level of 40dB LAeq(24hr) inside all habitable spaces.
11. Prior to either receiving produce not grown on the site; or prior to the construction of the proposed dwelling, the following improvements to State Highway 87 and the site access at Crossing Place 31 shall be completed:
  - *The consent holder shall upgrade and maintain Crossing Place 31, in accordance with the NZ Transport Agency's Planning Policy Manual Full Diagram E standard, with a minimum radius of 15m, and culverts and drainage as required.*
12. The surface of all parking, associated access and manoeuvring areas shall be formed, hard surfaced and adequately drained for their entirety, and parking spaces permanently marked in accordance with the approved plans.
13. The applicant shall provide three marked staff car parks within the site.
14. The content of any proposed signage shall be submitted to, and approved by, the Resource Consents Manager prior to installation.

**Advice notes:**

General

1. No works shall be undertaken within State Highway 87 without the prior approval of the NZ Transport Agency pursuant to Section 51 of the Government Roadings Powers Act 1989. An application to carry out work within the State Highway road reserve; and, and appropriate traffic management plan shall be submitted to our network contractor (Highway Highlanders coastalotago@downer.co.nz) at least ten working days prior to the commencement of any works on the state highway.
2. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
3. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
4. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
6. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

**End of Advice Notes**

## **APPLICATION**

|                                       |                 |
|---------------------------------------|-----------------|
| <b>APPLICATION NUMBER:</b>            | LUC-2018-669    |
| <b>RELATED APPLICATIONS/LICENCES:</b> | RMA-2004-368044 |

## PLANNING APPLICATION DETAILS FORM

|                                               |                                 |                                                                                     |                                        |
|-----------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------|----------------------------------------|
| <b>Property Address</b>                       |                                 | 781 Outram-Mosgiel Road Taleri                                                      |                                        |
| <b>Property Description:</b>                  |                                 | Property No: 5051994,<br>Legal Description: LOT 1 DP 7443                           |                                        |
| <b>First Contact: (Applicant)</b>             | <b>Name:</b>                    | S E McArthur and J K McArthur                                                       |                                        |
|                                               | <b>Mail Address:</b>            | C/O Allan Cublitt, 4 Norfolk Street, Dunedin 9012                                   |                                        |
|                                               | <b>Contact Email:</b>           | allan@cublittconsulting.co.nz                                                       |                                        |
|                                               | <b>Phone Number:</b>            |                                                                                     |                                        |
|                                               | <b>Method of Service</b>        | Preferred Method - Email                                                            |                                        |
| <b>Second Contact: (Agent)</b>                | <b>Name:</b>                    |                                                                                     |                                        |
|                                               | <b>Mail Address:</b>            |                                                                                     |                                        |
|                                               | <b>Phone Number:</b>            |                                                                                     |                                        |
|                                               | <b>Contact Person:</b>          |                                                                                     |                                        |
| <b>Description of Application:</b>            |                                 | land use consent for rural retail - beyond provisions of R/C issued RMA-2004-368044 |                                        |
| <b>Application Type:</b>                      |                                 | Land Use Consent                                                                    |                                        |
| <b>Fast Track?</b>                            |                                 |                                                                                     |                                        |
| <b>Consent Type:</b>                          | Farming/Forestry Activity       | <b>Consent Nature</b>                                                               | Rural Retail Sales Activity            |
| <b>Major Category</b>                         |                                 | Land Use Category C                                                                 |                                        |
| <b>Minor Category</b>                         |                                 | Non-Notified - Non Complying                                                        |                                        |
| <b>Senior Planner or Responsible Officer:</b> |                                 | Campbell Thomson                                                                    |                                        |
| <b>Lodgement Date:</b>                        |                                 | 05 November 2018                                                                    | <b>Lodgement Officer:</b> Laura Mulder |
| <b>Amount Paid:</b>                           | \$1,550.00 – not paid           | <b>Invoice Number:</b>                                                              | 719729                                 |
| <b>Waived:</b> <input type="checkbox"/>       |                                 |                                                                                     |                                        |
| <b>Application Requirements</b>               | <b>Signed Application Form</b>  |                                                                                     | <b>Copy of Title</b>                   |
|                                               | <b>Locality Plan</b>            |                                                                                     | <b>Site Plan</b>                       |
|                                               | <b>Plans and Elevations</b>     |                                                                                     | <b>AEE</b>                             |
|                                               | <b>Affected Persons Consent</b> |                                                                                     |                                        |
| <b>Counter Comments:</b>                      |                                 |                                                                                     |                                        |



**APPLICATION FOR  
LAND USE CONSENT**

**SE & JK McArthur**

**781 OUTRAM-MOSGIEL ROAD,  
OUTRAM**

*Prepared By*

**Cubitt Consulting Ltd**

**October 2018**

## Table of Contents

### Form 9 Consent Application

|                                                  | Page Number |
|--------------------------------------------------|-------------|
| 1. Description of Proposal                       | 1           |
| 2. Assessment of Environmental Effects           | 3           |
| 3. District Plan Policy Framework                | 7           |
| 4. Proposed District Plan                        | 8           |
| 5. Section 104D and the notion of True Exception | 9           |
| 6. Affected Persons Approval and Notification    | 10          |
| 7. Conclusion                                    | 11          |

### Appendices

|   |                            |
|---|----------------------------|
| 1 | Location plan              |
| 2 | Site plan                  |
| 3 | Building plans             |
| 4 | Computer Freehold Register |

## 1. Description of Proposal

### 1.1 *Description of Site*

The property subject to this application is located at 781 Outram-Mosgiel Road, (Valuation Number 27911-02100), approximately 300m east of Taieri River Bridge at Outram. Legally described as Lot 1 DP 7443 (CFR OT3B/175), the property has an area of 2.0234 hectares and has formed access to SH 87, which is a Limited Access Road at this location. The site is listed as having a registered Crossing Place numbered 31.

The property is owned by the McArthur family, who have operated a horticulture business in the area for in excess of 50 years. The current McArthur's operation specialises in the production of raspberries, cauliflowers, lettuces, leeks and potatoes. This particular site contains a raspberry and strawberry plantation that occupies most of the site. A stall has also been operating from this site for the last 40 years retailing the fruit and vegetable produced from the applicant's holdings. The subject site produces in excess of 4.5 tonnes fruit, which is sold through this outlet. The stall replaced a dwelling that was previously on the site.

Resource consent was granted in 2004 (RM2004-0622) to allow the sale of 'real fruit' ice cream and yoghurt from the site. The ice cream uses the berries produced on site and there is no sale of commercial ice cream brands. In excess of 350 ice creams can be sold in a day during the summer season, with the shop now known as the "ice cream shop by the bridge". Over the summer period, up to 5 staff from the local community are employed.

The retail outlet and associated cool store is set back approximately 20m from the road, with the area in front of the stall occupied by a car park with separate entry/exit lanes from SH 87. Two walnut trees stand to the south of the building, the larger one further to the south being protected in the District Plan. Another walnut is located to the north west of the building platform. The existing septic tank sits behind the cool store while there is a scheduled Regional Council drain that runs around the southern toe of the building platform.

While the wider area is generally rural, there are some undersized rural allotments in the area. Directly adjoining the site to the west, 799 Outram-Mosgiel Road is 2.3-hectares in size, while just across the bridge 52 Mountford Street is only 3246m<sup>2</sup>. To the east is 720 Outram-Mosgiel Road at 4047m<sup>2</sup> and 663 Outram-Mosgiel Road at 3335m<sup>2</sup>.

### 1.2 *Proposed Activity*

The McArthur's are a well-known horticultural family from the Outram area. Unfortunately, they are now one of only a few fruit and vegetable producers left on the Taieri that still operate at a commercial scale. Given the changing market conditions over the last few years, the sustainability of their business, along with that of the other vegetable producers, is under threat. As a consequence of this, the McArthur's have followed with interest the efforts of the 'Good Food Dunedin Alliance' and the work done in 2015 by Ahika and the Otago Polytechnic around exploring the opportunities for a Local Food Hub. This concept has the objective of promoting a more resilient food economy for Dunedin and Otago generally, by securing the future of local food production.

The philosophy of this approach underpins the McArthur's drive to secure the ongoing sustainability of their berry production and produce retail operation at this site, as a standalone family business. This application is essentially about achieving that outcome.

To do this will require the ability to retail produce not only grown on this site, but also from the local area as well as other parts of Otago. At this stage, it is envisaged that this produce would mainly be sourced from commercial market gardens in the area (for example, Mr Graham Young), along with from the smaller properties in the area that are not economic units but do produce good quality vegetables. Other local produce such as homemade jams (from the applicant's own berries), honey and eggs, would also be retailed when they were available. The aim of this is to support local producers and the use of the high-class soils in the area.

The applicants are also seeking the ability to retail produce not generally available in this area but which is grown within the Otago catchment, such as stone fruit produced in Central Otago.

The proposal will be based on a number of the principles of the Local Food Hub concept. The objective in that sense is to retail of fresh, high quality locally grown food, which is promoted in a way that the customer is provided with the back story of the social, environmental and community values incorporated into the production process. As a consequence, consent is that would enable the existing rural retail outlet to sell food produce produced in the wider Otago region, which is not 'commercially' branded.

In order to ensure the success and viability of what is a time-consuming business, the applicants are seeking the ability to live on the site for efficiency reasons. Hence, consent is also sought to reinstate the dwelling on the property.

Attached are plans prepared by Warnock Architecture Limited that seamlessly attaches a three-bedroom dwelling to the existing retail outlet. The cool store on the western side of the existing structure will be removed to enable this. The current structure has a footprint of 85m<sup>2</sup> and with the addition of the dwelling, this will increase to 288m<sup>2</sup>. The decks proposed around the dwelling will add an additional 61m<sup>2</sup> of outdoor amenity space.

The dwelling will be accessed from the existing car park, with a double garage at the car park level. The dwelling will be constructed on poles off the edge of the existing raised platform within the site (to be clear of the drainage channel), with the floor level approximately 600mm higher than the garage at around 12.18m above sea level.

The car park for the retail outlet will largely remain the same, although access to the dwellings garage will be separated from the car park by a fence to ensure there is no confusion.

### 1.3 *Status of Activities*

The site is zoned **Rural** in the operative Dunedin City District Plan (ODP). The bulk of property is also identified as containing high class soils, although this does not apply to the existing raised north east corner of the site where the existing stall and car park is located.

Residential activity is only permitted in the Rural zone if the site has an area of at least 15 hectares [Rule 6.5.2(iii)] and complies with the bulk and location requirements. The residential use of the existing site is therefore a **non-complying** activity in accordance with Rule 6.5.7(i).

Rural Retail sales from sites with access from a state highway are restricted discretionary activities within the Rural zone. However, where some of the produce is not produced on the site, the activity falls outside the ambit of a Rural Retail Sales Activity and becomes a **non-complying activity**.

The site is zoned **Rural Taieri Plains** in the proposed Dunedin City District Plan (PDP). The minimum site size for a dwelling (without subdivision) in the Taieri Plains zone is 25 hectares. While this rule is currently not operative, this aspect of the proposal would be non-complying under the PDP. As with the ODP, the retail activity falls outside the ambit of Rural Ancillary Retail and is therefore a commercial activity under this plan, which is non-complying.

The same High-Class Soil notation as the ODP also overlays the site. The same area shown as high-class soil also appears to be designated by the Otago Regional Council for the "Lower Taieri Flood Protection Scheme". This designation does not appear to affect the building site. A small part of the raised part of the site, in the north east corner, has also been identified as being within a Hazard 3 – Flood zone, although the building site is not located within this area.

Overall, the proposal is a **non-complying activity**.

## 2. Assessment of Environmental Effects

### 2.1 Introduction

Being a non-complying activity, Council is not restricted in terms of the matters it can consider. However, the Rural zone of the operative District Plan contains a range of assessment criteria in respect to resource consent applications. Having regard to those matters and after considering all potential effects of the activity, the following are the main issues that would normally need to be addressed and assessed:

- High class soils and productive potential of rural land
- Amenity values and character of the area
- Intensity of Activity
- Transportation
- Conflict and Reverse sensitivity
- Provision for water supply and disposal of stormwater and sewage
- Hazards and HAIL

With respect to the proposed District Plan, the assessment matters included within the provisions are effectively repeating what policies one must consider in assessing an application. This is unnecessary as an assessment of the objectives and policies is required regardless of what the District Plan may direct on this matter. However, for completeness, we have included them here.

Rule 16.12.2.1 contains the following are assessment matters for all non-complying activities under the proposed district plan.

*Relevant objectives and policies (priority considerations):*

*a. Objectives 16.2.1, 16.2.2, 16.2.3, 16.2.4*

*b. The activity does not detract from, or preferably contributes to, the strategic direction objectives, including, but not limited to, those related to:*

*i. Objective 2.2.2, 2.2.3, 2.2.4, and 2.3.1*

*General assessment guidance:*

*c. In assessing the significance of effects, consideration will be given to:*

*i. short to long term effects, including effects in combination with other activities; and*

*ii. the potential for cumulative adverse effects arising from similar activities occurring as a result of a precedent being set by the granting of a resource consent; and*

*iii. Manawhenua values and the relationship between manawhenua and the natural environment is maintained, including cultural values and traditions associated with:*

*1. wāhi tūpuna; and*

*2. the customary use of mahika kai (Objective 14.2.1).*

*iv. If located outside a **wāhi tūpuna mapped area**, Kai Tahu may advise the Council if it considers that the granting of the consent would affect the integrity of the broader environment within which the wāhi tūpuna is located, or the linkages between wāhi tūpuna.*

*d. In assessing activities that are noncomplying due to being in an overlay zone, mapped area, in a scheduled site, or affecting a scheduled item, that otherwise require resource consent, the assessment guidance provided in relation to the underlying activity status will also be considered.*

In relation to commercial activities, Rule 16.12.3 Assessment of Non-complying performance standard contravention provides as follows:

*Relevant objectives and policies (priority considerations):*

*a. Objective 2.3.2*

*b. Objective 16.2.1*

*c. Commercial activities, industrial activities and major facilities are avoided, unless otherwise provided for, in the rural zones (Policy 16.2.1.8).*

....

Condensing all these provisions down, and having regard to the operative District Plan provisions, we are of the opinion that the key effects that need to be considered are as follows:

- High class soils and productive potential of rural land
- Amenity values and character of the area
- Intensity of Activity and transportation effects
- Conflict and Reverse sensitivity
- Hazards, HAIL and Earthworks

## 2.2 *High Class Soil and Productive Potential of Rural Land (Assessment matter 6.7.15)*

The bulk of the site is identified as containing high class soils and is currently used for berry production. The existing retail outlet and the proposed dwelling site sit outside the area identified as high-class soils. Hence, the proposal will have no direct physical effects on the high-class soil resource or the productivity of the land in general.

However, as will be evident from Section 1.2 above, the purpose of the proposal is in fact to secure the long-term productive use of not only this site but also other existing productive sites in the area that do not have particularly secure access to markets. The ability to retail other produce from the area will assist in ensuring the viability of other producers (not just on economic units) and increase awareness of fresh, local food sources. This in turn will assist in retaining land, particularly high-class soil, in productive use, even on smaller lifestyle blocks.

To ensure the success of this operation, it is important that the manager of such a business (in this case the applicant) live on the site for efficiency purposes. The receiving, displaying and construction of the story behind the produce to be sold is likely to be a time-consuming business, that will occur at different times of the day. It is not feasible to live off site and manage this process efficiently.

Overall, the proposal will have a positive effect on the rural productivity and the ability to utilise high class soil resources through-out the Taieri.

## 2.3 *Rural Amenity Values*

The District Plan states that Dunedin's rural area *"has a generally low incidence of residential and other activities and is characterised by a low density of development, the size of buildings small and local roads having low traffic numbers. The character of the rural area is greatly influenced by the predominance of natural features and the productive use of the land."* The plan seeks to preserve the amenity values associated with this environment.

This proposal has been designed to ensure the rural productivity of the land is maintained and hence the building will attach to the existing built development on the site. This will ensure that built development is concentrated in one area, with the balance of the site maintaining an open, rural character. While the site maybe at a size more akin to a rural-residential property, the purpose of the proposal is actually to ensure that the land is maintained in a productive rural use.

The key in a rural amenity assessment is generally the impact the density of the proposal will have on the receiving environment. The character of the existing environment becomes the key factor in such an assessment. As we noted above, the site has previously contained a dwelling and already contains a level of built development. Significantly, the site is of similar size to the neighbouring property at 799 Outram-Mosgiel Road, which comprises 2.3-hectares. In that context, the proposal is not unusual in this location and will not look out of place.

In terms of the impact on neighbouring properties, the proposed dwelling encroaches slightly into the eastern 40m set back but attaches to the existing structure. Hence, there will be no impact on the amenity of the adjoining site due to this encroachment. The building is well set back from the western boundary.

As a consequence, there will be no impact on the amenity values of adjoining properties.

The dwelling does, however, encroach into the 20m front yard setback. The dwelling will be 12.3m from the road reserve boundary although the carriageway is approximately another 8m away from this boundary. However, it will be seen in the context of the existing building so any visual amenity effects are considered minimal.

In conclusion, the addition of a dwelling into this environment will not have any impact on the rural amenity values. Overall, any adverse effects of the proposal on rural amenity values is considered to be less than minor.

#### 2.4 *Intensity of Activity and Transportation Effects*

As we noted above, a stall has been operating from this site for around the last 40 years so it is an established part of the existing environment. Its operation has always been seasonal and no opportunity has been made available for people to consume the ice-cream product on site. This proposal will not change that.

During the busy summer months (usually December to January), the stall is open 8.30am to 5.30pm, 7-days a week. These hours have traditionally reduced slightly during the February to April window but that may not occur under this proposal with a wider range of product on offer. Hence, the traditional opening hours are to be retained for the months the stall will be open.

Increasing the produce options available for purchase at the site is likely to have some impact on the numbers visiting the stall, although it could be that existing customers just purchase more goods rather than make additional trips. Currently, the real fruit ice cream business generates the most vehicle trips to the site. Sales of fresh fruit and vegetables generally accompanies the sale of ice cream.

An increase in visitor number is obviously in the best interests of the business's viability (and that of its suppliers) but the applicant is unsure at this stage what that level of increase may be. However, they are comfortable that the existing access and parking layout will cope with at least a double the numbers currently visiting the site, given their experience over the last few years.

The existing access has been constructed to the appropriate standard with separate ingress and egress points. As the site plan illustrates, there is good sight line visibility both directions. The New Zealand Transport Agency were not concerned with the previous level of activity on the site but will be consulted on the current proposal and Council will be advised of the outcome of this in due course.

While it is not anticipated as being needed, during the busy summer months there is scope to provide additional parking down behind the existing stall building. The addition of a dwelling to the mix will not affect the current parking spaces available as a double garage has been incorporated into the dwelling design. Enabling the owners to live on the site will in fact reduce the numbers of vehicle movements to the site.

The current activity on the site is self-serviced for water supply and waste disposal. The increase in activity on the site may see the need for this infrastructure to be upgraded but we do not envisage there will be any greater effect on the environment as a result.



Overall, we do not envisage the addition of a manager residence and the increase in produce available at the site, will create any increase in the intensity of the activity that will be noticeable to the general public.

#### 2.5 *Conflict and Reverse Sensitivity Issues*

This is unlikely to be an issue in this particular location. The produce outlet is an established part of the environment. The dwelling will form part of an established rural activity and has the purpose of ensuring that the property remains productive, rather than turning the property into a rural lifestyle property.

#### 2.6 *Hazards, HAIL and Earthworks*

As noted above, the proposed District Plan identifies part of the area as a Hazard 3-Flood zone (low risk) while the ORC has designated the low-lying areas for its "Lower Taieri Flood Protection Scheme". However, the building site is clear of these notations, with the dwelling to be constructed on poles to avoid any ponding areas designated by the flood protection scheme.

The Otago Regional Council will be consulted on the proposal and Council will be advised of the outcome of this in due course.

With respect to the HAIL regulations, as a horticulture site, the wider property will be classified as a HAIL site. In this context, earthworks are limited to 5m<sup>3</sup> per 500<sup>2</sup> under the NES. The ODP restricts earthworks to a 2m change in ground level and a volume 200m<sup>3</sup>. At this stage we consider the proposal will likely comply with these thresholds given the house will be on poles. However, if that proves not to be the case, a land use for earthworks can be obtained at the time of construction, when there is more certainty around the issue.

#### 2.7 *Conclusion*

The above assessment leads us to conclude that the overall adverse effects of the activity will be no more than minor. As a consequence, the proposal meets the effects limb of the S104D test.

### **3. District Plan Policy Framework**

The key sections of the District Plan are Sustainability, Rural Zone, and Hazards. Each of these sections is considered below.

#### 3.1 *Sustainability*

The proposal is not considered inconsistent with the policy framework of the Sustainability section of the plan. These provisions seek to ensure that infrastructure is sufficient to cater for the activity without compromising the demands of future generations. They also encourage the protection of the natural and physical resources and the maintenance or enhancement of amenity values. Policy 4.3 8 seeks to avoid the mixing of incompatible activities.

The purpose of the proposal is to ensure the property remains a productive rural activity, despite its small size. There is also the wider purpose of assisting with the sustainable use of the high-class land resource in the area. The dwelling is not seen as incompatible with this purpose, but as an essential part of the management of the property to achieve this purpose.

Policy 4.3.7 promotes the use of zoning to provide for uses and developments which are compatible in identified areas. This is a process policy given effect to by the zones created within the Plan. The explanation states that *"People and communities within Dunedin City seek a high degree of certainty as to the amenity within different parts of the City. This necessitates the adoption of zoning as a technique to provide such certainty and to ensure that the adverse effects of incompatible activities are avoided, remedied or mitigated."*

In this context, it is appropriate to consider the effect on the Activity zones under this policy. While we note that Council cannot have regard to the trade competition or the effects of trade competition, we do not expect this operation to have any negative impact on the commercial centre of Mosgiel. The convenience and range of product offered in the established Mosgiel commercial area will ensure it is not affected by a very small operation (comprising a net retail area of approximately 80m<sup>2</sup>) such as this. People will continue to shop in the Mosgiel commercial centre for their grocery needs because they simply will not be able to purchase everything they require here. Hence, we do not believe this proposal will have any detrimental effect on the existing Mosgiel commercial zone.

### 3.2 *Rural zones*

The relevant objectives and policies of the Rural Zones section chiefly seek to protect the productive potential of the zone, public infrastructure, and rural character and amenity values.

The proposal will not physically affect the productive values and high-class soil of the site but will ensure those resources and values are maintained into the future. As noted above, the expanded produce outlet will also assist with this on a wider scale within the district. The addition of a dwelling to the site is not inconsistent with the surrounding development and any adverse effects on the amenity values of the surrounding area will be minor. There will be little conflict with the other activities in this location.

In summary, we consider the proposal consistent with all relevant objectives and policies of the Rural Zones.

### 3.3 *Hazards*

The Hazards policy suite merely requires the effects of hazards to be avoided, remedied or mitigated (Objective 17.2.1) while development affected by flooding is to be "controlled" (Policy 17.3.3). This policy suite is given effect to by the location of the building site and the dwelling being constructed on poles.

### 3.6 *Conclusion – Objectives and Policies*

Having considered the relevant objectives and policies of the District Plan, it is concluded that the proposal is not inconsistent with the policy framework.

## 4. **Proposed District Plan**

The proposed District Plan was notified on the 26<sup>th</sup> September 2015 and submissions closed on the 24<sup>th</sup> of November 2015. Decisions are to be released soon. There are numerous submissions on the provisions of the proposed District Plan. Hence limited weight can be given to the provisions of that plan. However, some regard must be given to the policy framework of the proposed plan.

The proposed District Plan zones the site 'Rural Taieri Plains'. There are a number of objectives and policies relevant to the proposal.

Objective 16.2.1 is to reserve the rural zones *"for productive rural activities and the protection and enhancement of the natural environment along with certain activities that support the wellbeing of rural communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika."* The dwelling proposed for this site is needed to support the productive activity on the site and the ancillary rural retail outlet. Policy 16.2.1.7 requires residential activity to be *"avoided in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision."* While the proposal is not consistent with this policy (due to the density standard not being met), the proposed dwelling is essentially reinstating a previous dwelling on what is an existing site i.e. no fragmentation is occurring.

Policy 16.2.4.4 is to *"avoid residential activity in the rural zones at a density that may, over time and cumulatively, reduce rural productivity by displacing rural activities."* While the proposal does not meet the density standard of the plan, the site is an existing productive rural site and the dwelling will ensure the ongoing sustainability of the existing rural activity on the site.

Policy 16.2.1.8 is to avoid, commercial activities, unless otherwise provided for, in the rural zones while Policy 16.2.1.3 is to *"require rural ancillary retail, rural tourism and working from home, to be at a scale that:*

- a. is ancillary to and supportive of productive rural activities or conservation activity on the same property; and*
- b. supports Objectives 2.3.2 and 2.4.3 and their policies."*

While the proposal does not strictly meet the definition of rural ancillary retail, a significant portion of the product retailed from the site will continue to be from the subject property. Furthermore, the majority of the products, if not all products, to be sold through the produce outlet could be produced and processed on site and then retailed through a rural retail sales outlet.

However, the survival of not only this site but others in the area is under threat from a centralised food industry. To survive, producer need to find additional market options. This proposal will continue to support productive rural activities in the area, without compromising the sustainability of town centres in the area.

While there is some inconsistency with the PDP, and in some cases the proposal may be contrary to individual provisions, in our opinion, the proposal achieves the policy outcomes sought by the proposed District Plan.

## **5. Section 104D of the Act and the notion of 'True Exception'**

Given the proposal's non-complying status, consideration must be given to the provisions of section 104D of the Resource Management Act. That section requires an application for a non-complying activity to pass one of two thresholds in order to be considered for approval, namely the environmental effects must be no more than minor or the proposal must not be contrary to the objectives and policies of the District Plans. Our assessment above indicates that the proposal in fact passes

through both gateways and Council can therefore consider granting consent to the application accordingly.

Given that the activity passes both limbs of the section 104D test, the only other issue that needs to be considered is the question of plan integrity and precedent. The Dunedin City Council tends to apply the 'true exception' test promulgated in the Russell decision in this regard. It should be noted that there are few, if any, other Environment Court divisions outside that of Judge Smith's Court that apply this test. In our view the Council should apply the actual authorities on this issue and not just solely the Russell test. The authority on precedent effects is Dye v Auckland Regional Council, CA86/01, which notes that the granting of a resource consent has no precedent effect in the strict sense. It is obviously necessary to have consistency in the application of legal principles and all resource consent applications must be decided in accordance with a correct understanding of those principles. In factual terms however, no two applications are ever likely to be the same, albeit one may be similar to the other. The most that can be said is that the granting of consent may well have an influence on how other applications should be dealt with. The extent of that influence will depend on the extent of the similarities.

More recently, the Courts have been quite critical of arguments based around plan integrity. As noted the EC in *Wilson v Whangarei DC W20/07*, arguments about plan integrity are "*overused and it can rarely withstand scrutiny when measured against the provisions of the RMA.*" [Paragraph 43]. The Court of Appeal stated in the *Auckland RC v Living Earth (2008)* decision that having specific and explicit regard to the integrity of the Plan is not required as a matter of law. The 2009 EC decision *Protect Piha Heritage Soc Inc v Auckland RC A015/09* noted that the RMA makes no reference to the integrity of planning instruments, precedent or to the coherence of and public confidence in the District Plan. While these are useful concepts that may be applied in appropriate cases, the Court stated that the need to apply them is less necessary where the plan provisions are effects based and the proposal does not generate adverse effects which are more than minor. The EC in *Berry v Gisborne DC W20/07* made it quite clear from that there will be very few cases where "plan integrity will be imperilled to the point of dictating that the instant application should be declined".

In our view, this site is already an exception in the rural area. It is an existing undersized allotment at 2has, that previously contained a dwelling and now contains a commercial activity, albeit one that has a rural retail focus. The purpose of the proposed activity is to maintain and enhance the productivity of the existing site, while also offering the opportunity for other small productive land holdings to secure their future through a direct market outlet.

The integrity of the District Plan will not be undermined by approval to this proposal.

## **6. Affected Persons and Notification**

We anticipate that Council will notify this application. However, the application will be sent to the New Zealand Transport Agency and the Otago Regional Council for comment. The outcome of this consultation will be sent on to Council once received.

## **7. Conclusion**

We are confident that any adverse effects arising from this proposal will be minor or less. Overall, the effects on rural productivity are considered to be positive. We are of the view that the proposal promotes the purpose of the Act, being the sustainable management of the natural and physical resources.



# Application Form for a Resource Consent

50 The Octagon, PO Box 5045, Moray Place  
Dunedin 9058, New Zealand  
Ph 03 477 4000 | www.dunedin.govt.nz

## PLEASE FILL IN ALL THE FIELDS

### Application details

I/We SE & JK McArthur (must be the FULL name(s) of an individual or an entity registered with the New Zealand Companies Office. Family Trust names and unofficial trading names are not acceptable; in those situations, use the trustee(s) and director(s) names instead) hereby apply for:

☒ Land Use Consent ☐ Subdivision Consent

I opt out/do not opt out (delete one) of the fast-track consent process (only applies to controlled activities under the district plan, where an electronic address for service is provided)

Brief description of the proposed activity: \_\_\_\_\_  
See Attached AEE

Have you applied for a Building Consent? ☐ Yes, Building Consent Number ABA \_\_\_\_\_ ☒ No

### Site location/description

I am/We are the: ☒ owner ☐ occupier ☐ lessee ☐ prospective purchaser of the site (tick one)

Street Address of Site: 781 Outram-Mosgiel Road

Legal Description: Lot 1 DP 7443

Certificate of Title: CFR OT3B/175

### Contact details

Name: Allan Cubitt (agent) (applicant/agent (delete one))

Address: 4 Norfolk Street, Dunedin Postcode: 9012

Phone (daytime): 027 2083181 Email: allan@cubittconsulting.co.nz

### Chosen contact method (this will be the first point of contact for all communications for this application)

I wish the following to be used as the address for service: ☒ email ☐ post ☐ other \_\_\_\_\_ (tick one)

### Address for invoices or refunds (if different from above)

Name: SE & JK McArthur

Address: 231 Tirohanga Road RD2 Mosgiel 9092

### Bank details for refunds

Bank Account Name: \_\_\_\_\_

Account Number: 

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Bank Branch Account Number Suffix

### Ownership of the site

Who is the current owner of the site? the applicant

If the applicant is not the site owner, please provide the site owner's contact details:

Address: \_\_\_\_\_ Postcode: \_\_\_\_\_

Phone (daytime): \_\_\_\_\_ Email: \_\_\_\_\_

### Occupation of the site

Please list the full name and address of each occupier of the site: \_\_\_\_\_  
the applicant \_\_\_\_\_

### Monitoring of your Resource Consent

To assist with setting a date for monitoring, please estimate the date of completion of the work for which Resource Consent is required. Your Resource Consent may be monitored for compliance with any conditions at the completion of the work. (If you do not specify an estimated time for completion, your Resource Consent, if granted, may be monitored three years from the decision date).

\_\_\_\_\_ (month and year)

Monitoring is an additional cost over and above consent processing. You may be charged at the time of the consent being issued or at the time monitoring occurs. Please refer to City Planning's Schedule of Fees for the current monitoring fee.

### Detailed description of proposed activity

Please describe the proposed activity for the site, giving as much detail as possible. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please provide proposed site plans and elevations.

see attached AEE

### Description of site and existing activity

Please describe the existing site, its size, location, orientation and slope. Describe the current usage and type of activity being carried out on the site. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please also provide plans of the existing site and buildings. Photographs may help.

see attached AEE

\_\_\_\_\_ (Attach separate sheets if necessary)

### District plan zoning

What is the District Plan zoning of the site? \_\_\_\_\_ Rural

Are there any overlaying District Plan requirements that apply to the site e.g. in a Landscape Management Area, in a Townscape or Heritage Precinct, Scheduled Buildings on-site etc? If unsure, please check with City Planning staff.

### Breaches of district plan rules

Please detail the rules that will be breached by the proposed activity on the site (if any). Also detail the degree of those breaches. In most circumstances, the only rules you need to consider are the rules from the zone in which your proposal is located. However, you need to remember to consider not just the Zone rules but also the Special Provisions rules that apply to the activity. If unsure, please check with City Planning staff or the Council website.

see attached AEE

### Affected persons' approvals

I/We have obtained the written approval of the following people/organisations and they have signed the plans of the proposal:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Please note: You must submit the completed written approval form(s), and any plans signed by affected persons, with this application, unless it is a fully notified application in which case affected persons' approvals need not be provided with the application. If a written approval is required, but not obtained from an affected person, it is likely that the application will be fully notified or limited notified.

### Assessment of Effects on Environment (AEE)

In this section you need to consider what effects your proposal will have on the environment. You should discuss all actual and potential effects on the environment arising from this proposal. The amount of detail provided must reflect the nature and scale of the development and its likely effect. i.e. small effect equals small assessment.

You can refer to the Council's relevant checklist and brochure on preparing this assessment. If needed there is the Ministry for the Environment's publication "A Guide to Preparing a Basic Assessment of Environmental Effects" available on [www.mfe.govt.nz](http://www.mfe.govt.nz). Schedule 4 of the Resource Management Act 1991(RMA) provides some guidance as to what to include.

see attached AEE

(Attach separate sheets if necessary)

The following additional Resource Consents from the Otago Regional Council are required and have/have not (delete one) been applied for:

☐ Water Permit ☐ Discharge Permit ☐ Coastal Permit ☐ Land Use Consent for certain uses of lake beds and rivers ☒ Not applicable



## Declaration

I certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I accept that I have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I agree to pay all the fees and charges levied by the Dunedin City Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid.

Allan Cubitt

26 October 2018

Signature of Applicant/Agent (delete one): \_\_\_\_\_ Date: \_\_\_\_\_

## Privacy – Local Government Official Information and Meetings Act 1987

You should be aware that this document becomes a public record once submitted. Under the above Act, anyone can request to see copies of applications lodged with the Council. The Council is obliged to make available the information requested unless there are grounds under the above Act that justify withholding it. While you may request that it be withheld, the Council will make a decision following consultation with you. If the Council decides to withhold an application, or part of it, that decision can be reviewed by the Office of the Ombudsmen.

Please advise if you consider it necessary to withhold your application, or parts of it, from any persons (including the media) to (tick those that apply):

- ☐ Avoid unreasonably prejudicing your commercial position
- ☐ Protect information you have supplied to Council in confidence
- ☐ Avoid serious offence to tikanga Maori or disclosing location of waahi tapu

## What happens when further information is required?

If an application is not in the required form, or does not include adequate information, the Council may reject the application, pursuant to section 88 of the RMA. In addition (section 92 RMA) the Council can request further information from an applicant at any stage through the process where it may help to a better understanding of the nature of the activity, the effects it may have on the environment, or the ways in which adverse effects may be mitigated. The more complete the information provided with the application, the less costly and more quickly a decision will be reached.

## Fees

Council recovers all actual and reasonable costs of processing your application. Most applications require a deposit and costs above this deposit will be recovered. A current fees schedule is available on [www.dunedin.govt.nz](http://www.dunedin.govt.nz) or from Planning staff. Planning staff also have information on the actual cost of applications that have been processed. This can also be viewed on the Council website.

## Development contributions

Your application may also be required to pay development contributions under the Council's Development Contributions Policy. For more information please ring 477 4000 and ask to speak to the Development Contributions Officer, or email [development.contributions@dcc.govt.nz](mailto:development.contributions@dcc.govt.nz).

## Further assistance

Please discuss your proposal with us if you require any further help with preparing your application. The Council does provide pre-application meetings without charge to assist in understanding the issues associated with your proposal and completing your application. This service is there to help you.

Please note that we are able to provide you with planning information but we cannot prepare the application for you. You may need to discuss your application with an independent planning consultant if you need further planning advice.

City Planning Staff can be contacted as follows:

In Writing: Dunedin City Council, PO Box 5045, Moray Place, Dunedin 9058

In Person: Customer Services Centre, Ground Floor, Civic Centre, 50 The Octagon

By Phone: (03) 477 4000, Fax: (03) 474 3451

By Email: [planning@dcc.govt.nz](mailto:planning@dcc.govt.nz)

There is also information on our website at [www.dunedin.govt.nz](http://www.dunedin.govt.nz).

**Information requirements (two copies required)**

- ☐ Completed and Signed Application Form  
☐ Description of Activity and Assessment of Effects  
☐ Site Plan, Floor Plan and Elevations (where relevant)  
☐ Certificate of Title (less than 3 months old) including any relevant restrictions (such as consent notices, covenants, encumbrances, building line restrictions)  
☐ Written Approvals  
☐ Forms and plans and any other relevant documentation signed and dated by Affected Persons  
☐ Application Fee (cash, cheque or EFTPOS only; no Credit Cards accepted)  
☐ Bank account details for refunds

In addition, subdivision applications also need the following information

- ☐ Number of existing lots.                      ☐ Number of proposed lots.  
☐ Total area of subdivision.                      ☐ The position of all new boundaries.

In order to ensure your application is not rejected or delayed through requests for further information, please make sure you have included all of the necessary information. A full list of the information required for resource consent applications is in the Information Requirements Section of the District Plan.

**OFFICE USE ONLY**

Has the application been completed appropriately (including necessary information and adequate assessment of effects)?

☐ Yes    ☒ No

Application: ☐ Received    ☐ Rejected

Received by: ☐ Counter    ☐ Post    ☐ Courier    ☐ Other: \_\_\_\_\_

Comments: kkk \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Include reasons for rejection and/or notes to handling officer)

Planning Officer: \_\_\_\_\_ Date: \_\_\_\_\_



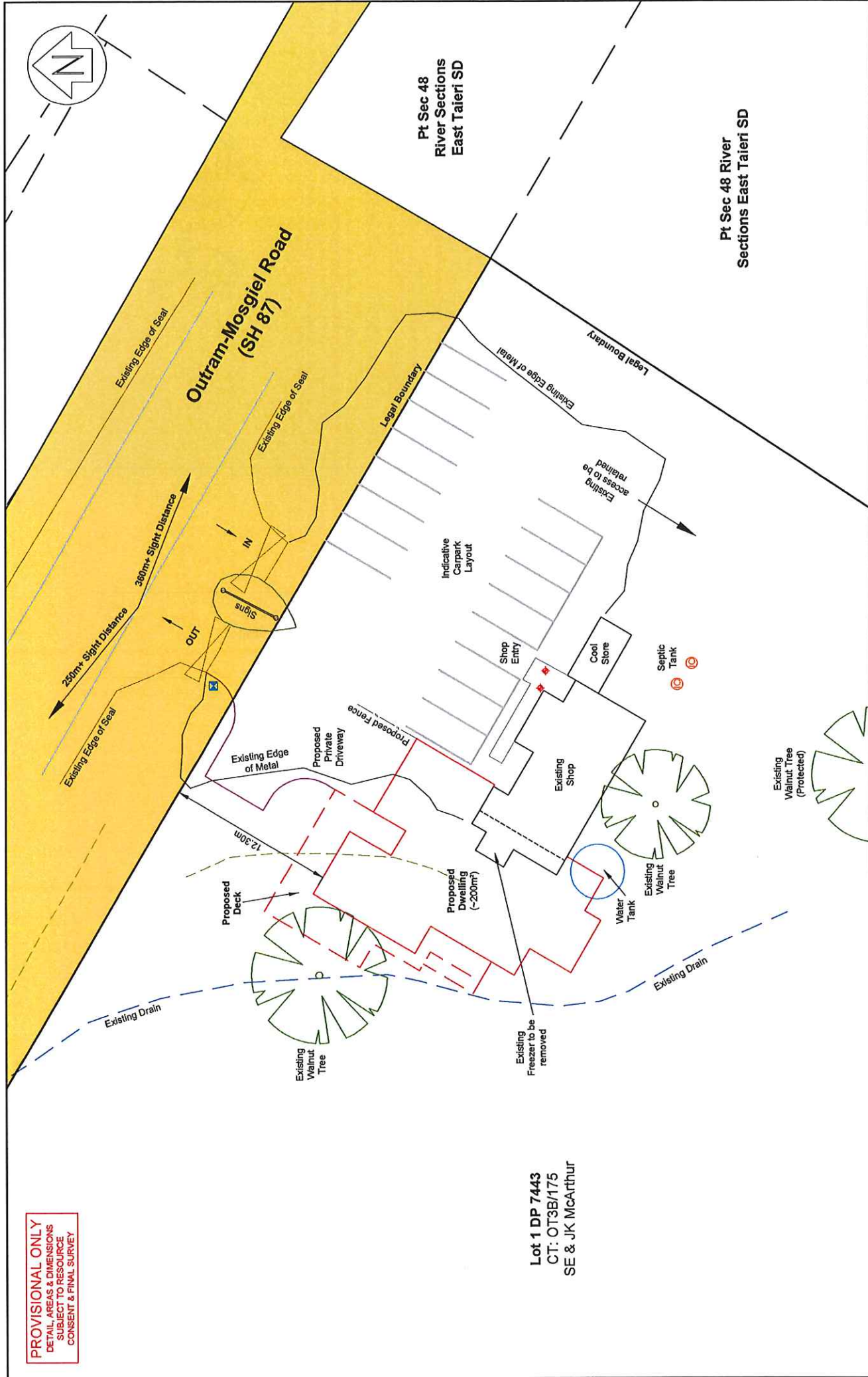


## Site Overview - Sheet 1

### 781 Outram-Mosgiel Road - Outram

|              |          |
|--------------|----------|
| Scale:       | Job No:  |
| 1:3000 @ A3  | M1401    |
| Date:        | Plan No: |
| October 2018 | M1401/2  |







# COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952

Search Copy



R. W. Muir  
Registrar-General  
of Land

**Identifier** OT3B/175  
**Land Registration District** Otago  
**Date Issued** 22 November 1967

## Prior References

OT207/153 OT264/56

---

|                          |                              |
|--------------------------|------------------------------|
| <b>Estate</b>            | Fee Simple                   |
| <b>Area</b>              | 2.0234 hectares more or less |
| <b>Legal Description</b> | Lot 1 Deposited Plan 7443    |

## Proprietors

Steven Edward McArthur and Judith Kaye McArthur

---

## Interests

501770 Gazette Notice declaring State Highway 87 (Mosgiel-Kyebrum) fronting the within land to be a limited access road - 17.8.1978 at 1.39 pm

10100907.3 Mortgage to ANZ Bank New Zealand Limited - 25.6.2015 at 10:46 am

Identifier OT3B/175

LAND TRANSFER ACT, 1915.

LOS N31

Land Transfer Office

Received.....*21.11.51*.....*74691*...

Title Ref.....*207/153*.....*264/56*...

Referred to Draughtsman, N. A. N.

Deposited this *15th* day  
of *January* 1951.

*St. James's*  
District Land Registrar.

*101-  
21-16*

Parts of River Section 49 + Sec. 1239 R.

Comprised in *Ca.T. 207/153 & 264/56* Ltd.

SURVEY DIST. & BLK. EAST. TAIERI DISTRICT.

LAND DIST. *Otago* LOCAL BODY. *Taiari County*

Scale: *150 links to an inch* Surveyed by *J.E.K. Lambourne* Date: *June 1951*

I, *James Ernest Ross Lambourne*, of *Dunedin*, Registered Surveyor and a holder of an annual practicing certificate, do solemnly and sincerely declare that this plan has been made from surveys executed by me, that both plan and survey are correct, and have been made in accordance with the regulations under the Surveyors Act, 1913.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statute in that behalf made.

Declared at *Dunedin* this *15th* day of *August* 1951.

before me: *[Signature]*

*[Signature]* Justice of the Peace

Approved as to Survey

Chief Surveyor

LT Draughtsman

Received.....*21.11.51*.....*74691*...

Reference plan *207/153 & 264/56*

*1016, 250 A*.....*p. 26*...

Field book: *1A.12*.....*p. 26*...

Traverse book: *110*.....*p. 26*...

Examined by *[Signature]*.....*p. 26*...

Recorded *11/11/51*.....*p. 26*...

Correct.....*11/11/51*.....*p. 26*...

*L. T. Draughtsman*

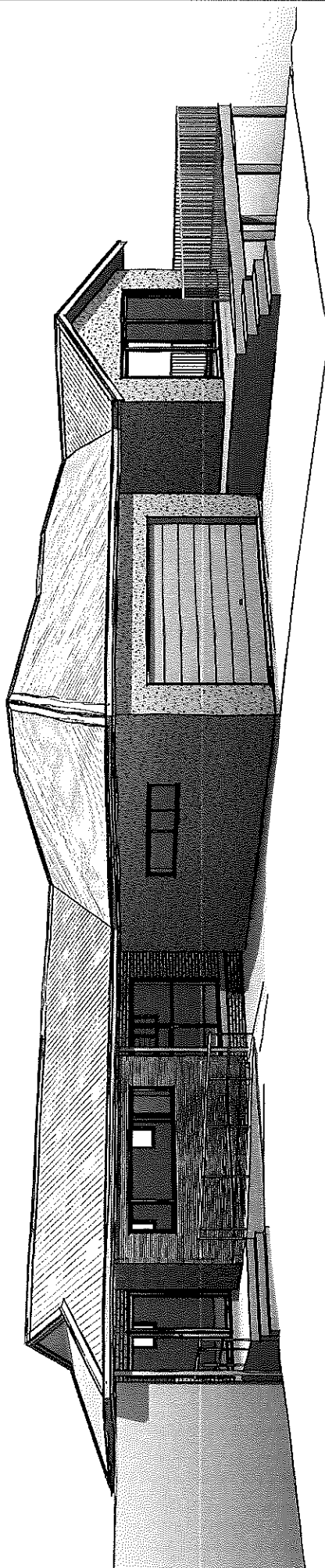
Approved,

*J. R. Brunsell*

Applicant (or Registered Owner)

Scheme Plan Waived

| Revision Schedule |       |               |
|-------------------|-------|---------------|
| Ref               | Date  | Description   |
| A                 | 01/08 | Sketch Design |



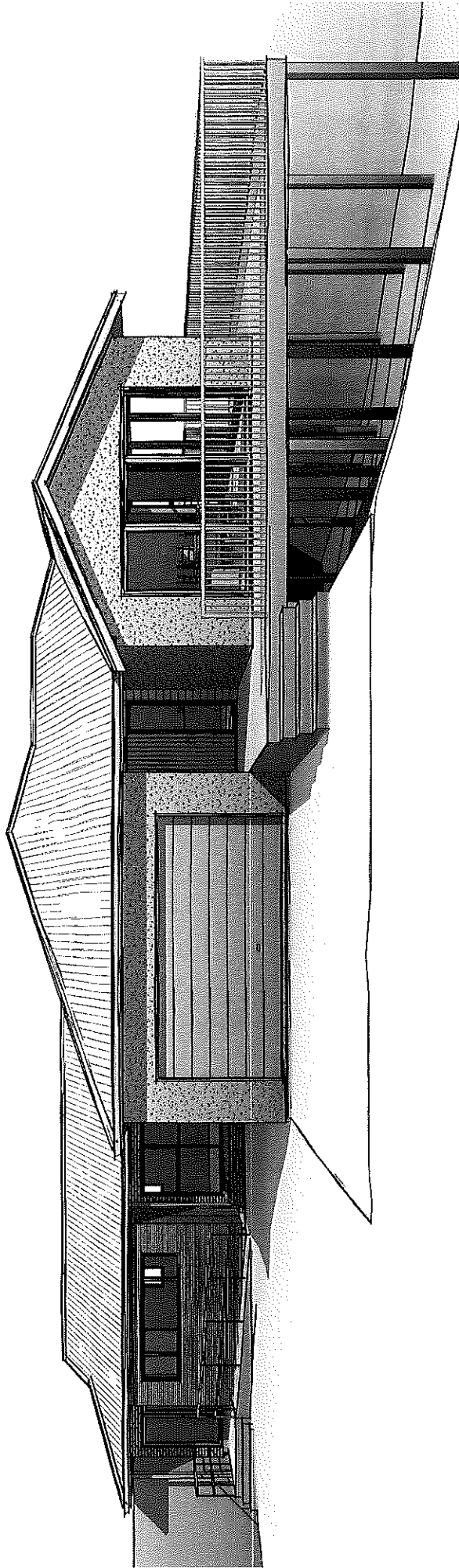
3D View J

|                                                                               |
|-------------------------------------------------------------------------------|
| JOB TITLE                                                                     |
| Proposed Alterations for<br>S&J McArthur<br>781 Outram-Mosgiel Road<br>Taieri |

|             |
|-------------|
| SHEET TITLE |
| 3D Views    |

|       |               |               |       |          |           |
|-------|---------------|---------------|-------|----------|-----------|
| TRADE | Architectural | DESIGNED      | RJW   | CHECKED  | RJW       |
| DATE  | OCT 2018      | SCALE         | 1:879 | JOB NO.  | 1879      |
| DRAWN | TW            | CAD REFERENCE | 1879  | REVISION | A         |
|       |               |               |       |          | SHEET NO. |
|       |               |               |       |          | A0.0      |

ORIGINAL SHEET SIZE A3 (100x357), 210/297mm 432x329 µm. © COPYRIGHT

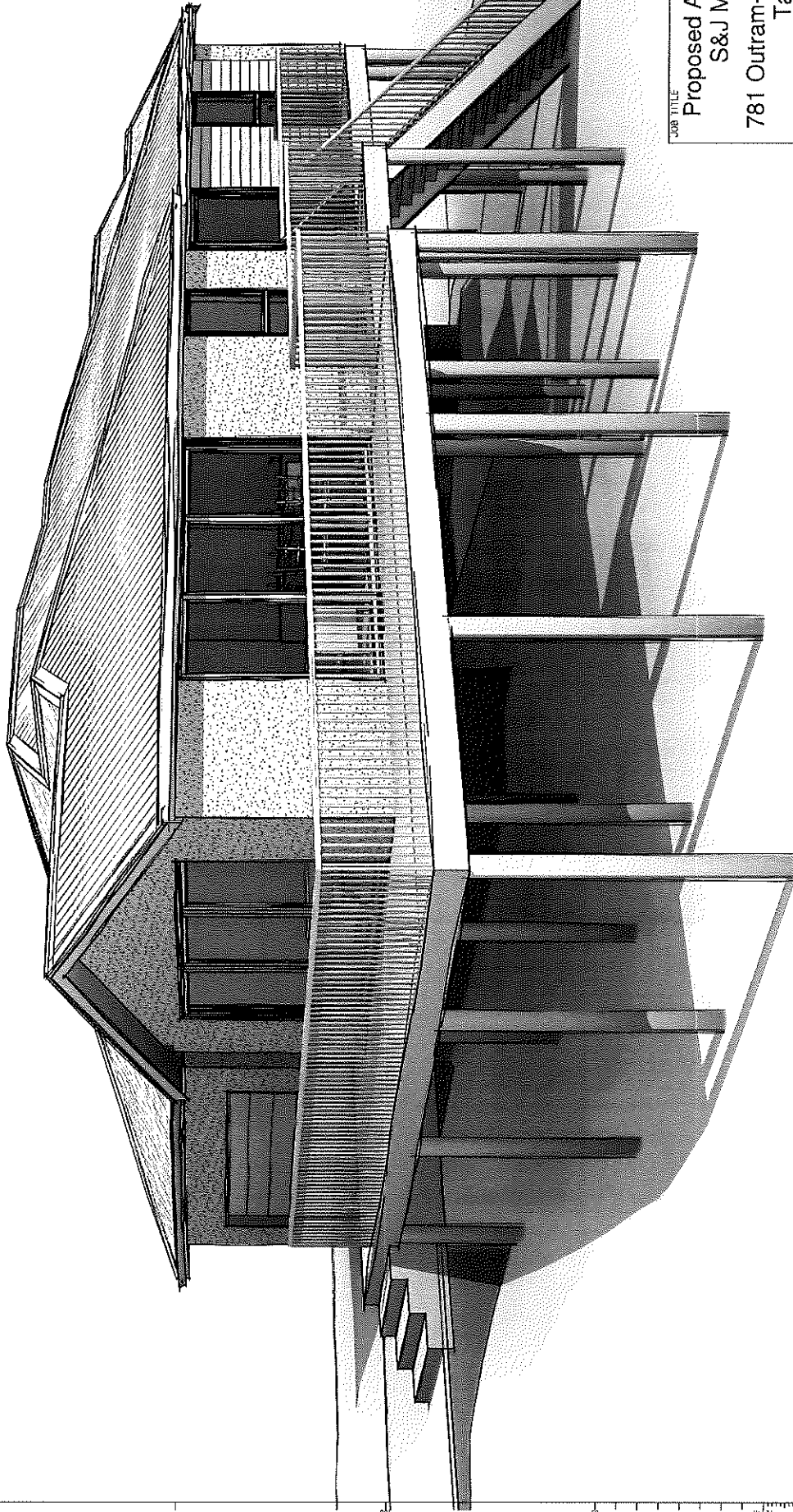


3D View 2

| Revision Schedule |      |               |
|-------------------|------|---------------|
| Ref               | Date | Description   |
| A                 | 0000 | Sketch Design |

|                                                                               |               |           |
|-------------------------------------------------------------------------------|---------------|-----------|
| JOB TITLE                                                                     |               |           |
| Proposed Alterations for<br>S&J McArthur<br>781 Outram-Mosgiel Road<br>Taieri |               |           |
| SHEET TITLE                                                                   |               |           |
| 3D Views                                                                      |               |           |
| TRADE                                                                         | Architectural | CHECKED   |
| DESIGNED                                                                      | RJW           | RJW       |
| DATE                                                                          | OCT 2018      | SHEET No. |
| DRAWN                                                                         | TW            | 1879      |
| SCALE                                                                         | 1:100         | REVISION  |
| CAU REFERENCE                                                                 | 1879          | A         |
| CAU REFERENCE                                                                 | 1879          | A         |
| CAU REFERENCE                                                                 | 1879          | A         |





| Ref | Date | Revision Schedule | Description |
|-----|------|-------------------|-------------|
|     |      |                   |             |

|           |                                                                               |
|-----------|-------------------------------------------------------------------------------|
| JOB TITLE | Proposed Alterations for<br>S&J McArthur<br>781 Outram-Mosgiel Road<br>Taieri |
|-----------|-------------------------------------------------------------------------------|

|             |          |
|-------------|----------|
| SHEET TITLE | 3D Views |
|-------------|----------|

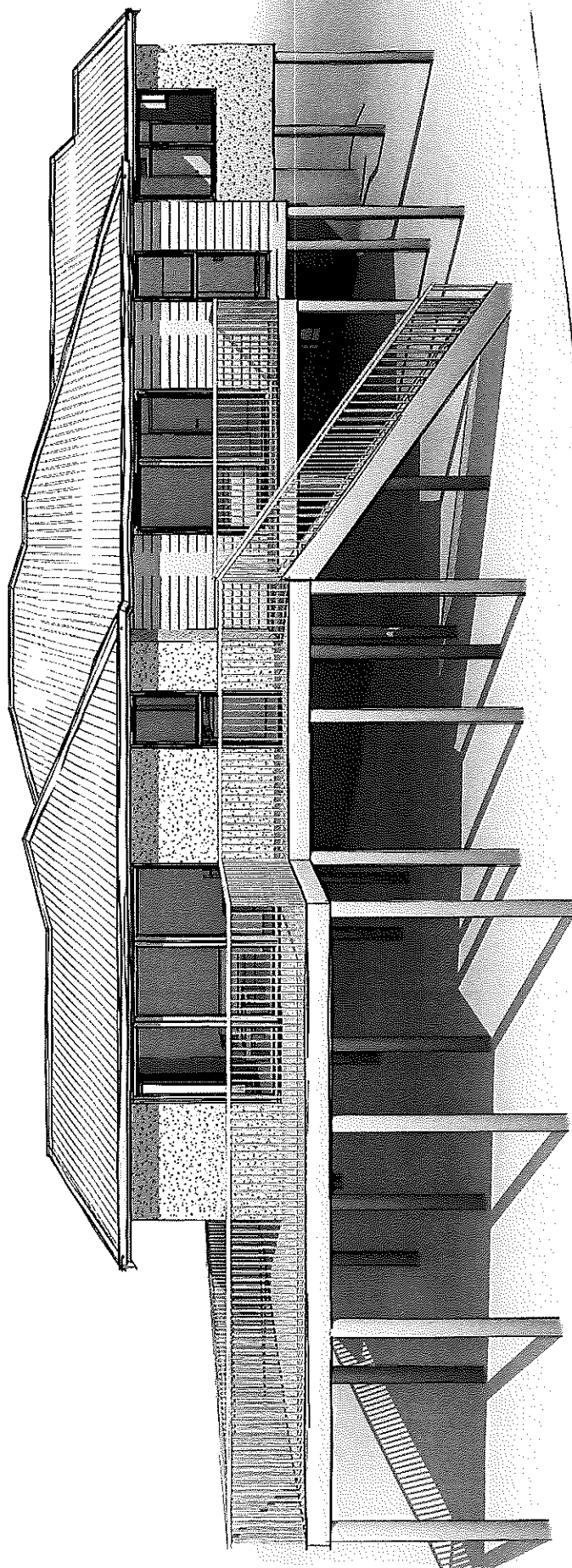
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| TRADE | Architectural | DESIGNED      | RJW  | CHECKED   | RJW  |
| DATE  | OCT 2018      | SCALE         |      | JOB NO.   | 1879 |
| DRAWN | TW            | CAD REFERENCE | 1878 | REVISION  |      |
|       |               |               |      | SHEET NO. | A0.2 |

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3D View 3

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

Sketch Design



### 3D View 4

## Job Title

## FILE Proposed Alterations for

S&J McArthur

781 Outram-Mosgiel Road  
Taieri

## SHEET TITLE

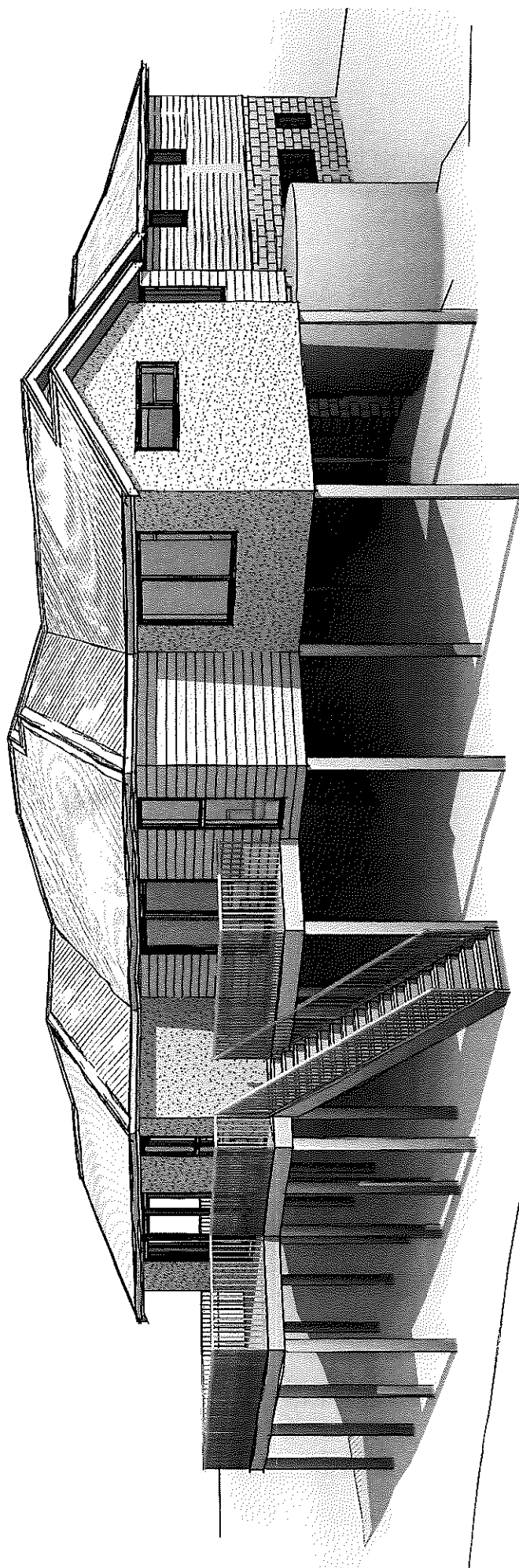
3D Views

|       |               |               |          |      |                          |
|-------|---------------|---------------|----------|------|--------------------------|
| TRADE | Architectural |               | DESIGNED | CHKD | SHEET NO.<br><b>A0.3</b> |
|       |               |               | RJW      | RJW  |                          |
| DATE  | OCT 2018      | SCALE         | JOB NO.  | 1879 |                          |
| DRAWN | TW            | CAD REFERENCE | REVISION | A    |                          |
|       |               |               | 1879     |      |                          |

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The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

## Sketch Design



3D View 5

**JOB TITLE**

Proposed Alterations for  
S&J McArthur

781 Outram-Mosgiel Road  
Taieri

तथा च

3D Views

Architectural

DESIGNED  
RJW

CHECKED  
RJW

|            |       |
|------------|-------|
| DATE       | SCALE |
| 1 OCT 2018 |       |

1879  
B. No.

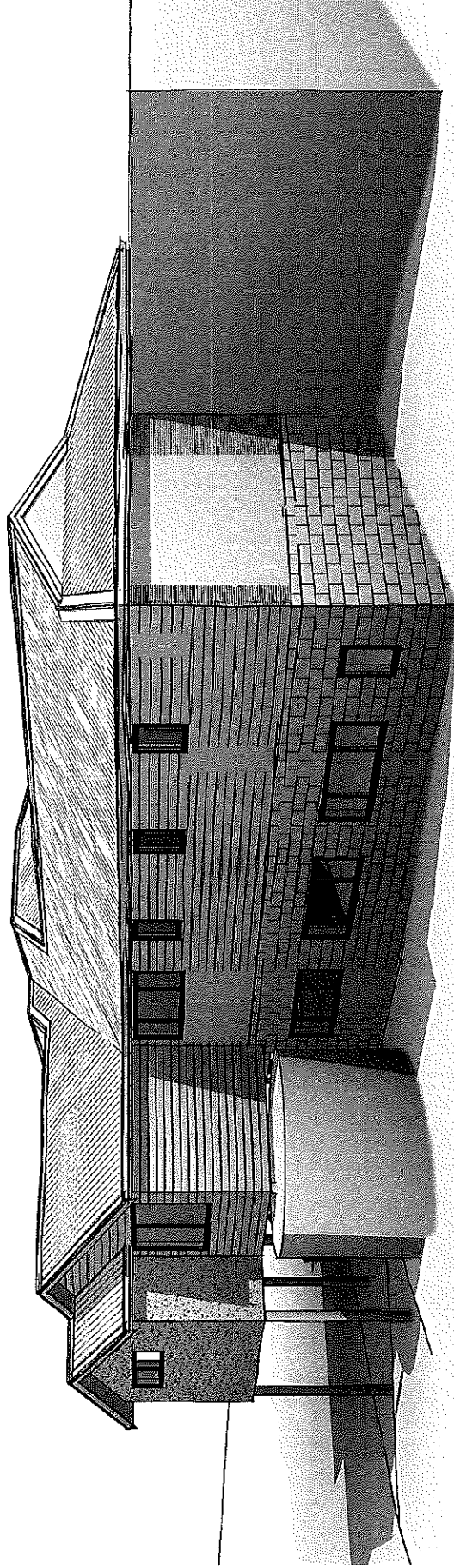
SHEET No.

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

## Sketch Design

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| Revision Schedule |      |               |
|-------------------|------|---------------|
| Rev               | Date | Description   |
| A                 | 0008 | Sketch Design |



3D View 6

JOB TITLE  
Proposed Alterations for  
S&J McArthur  
781 Outram-Mosgiel Road  
Taieri

SHEET TITLE  
3D Views

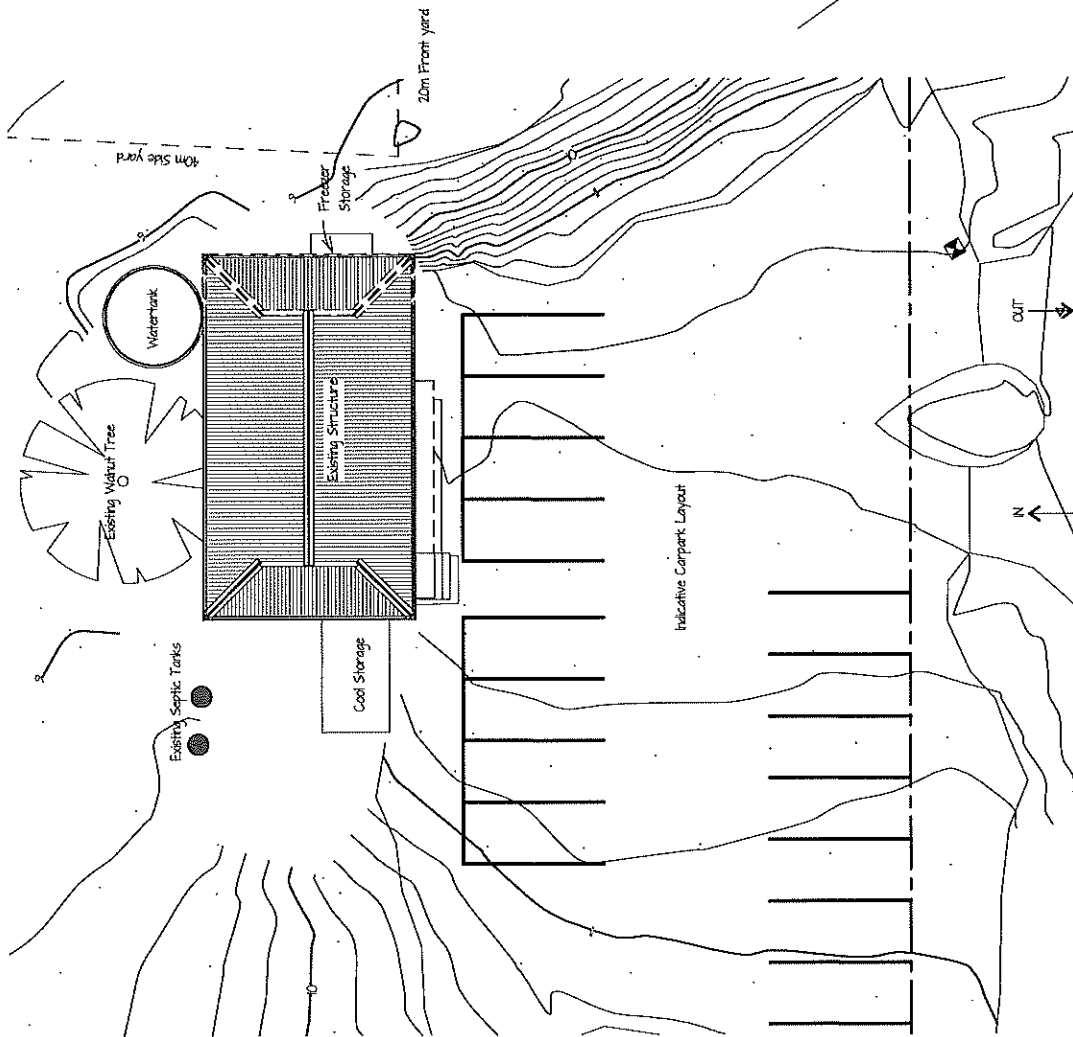
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| DRAWN  | CAU           | REFERENCE            | REVISION           |
| Author | 1879          | A                    | A0.5               |

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The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

Sketch Design





**Existing Site Plan**

1:200

SH87  
Outram-Mosgiel Road

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

| Revision Schedule |       |               |
|-------------------|-------|---------------|
| Ref               | Date  | Description   |
| A                 | 01/08 | Sketch Design |

**Legal Description**  
781 Outram-Mosgiel Road Riverside

Outram

LOT 1

DP 7449

Valuation number : 279-0200

Property number : 505994

**Site Coverage**

Site Area = 20294m<sup>2</sup>

Existing site coverage = 8505m<sup>2</sup> - 0.004%

Proposed Site Coverage = house and existing shop

228m<sup>2</sup> + proposed decks 6m<sup>2</sup> = 349m<sup>2</sup> - 0.007%

**Zoning**

- Wind
  - High
  - 4m
- Snow
  - 0.9m
- Earthquake
  - Zone 1
- Corrosion
  - Zone B
- Zone
  - Rural
- Climate
  - Zone 3
- Rainfall Intensity
  - 40-50

JOB TITLE

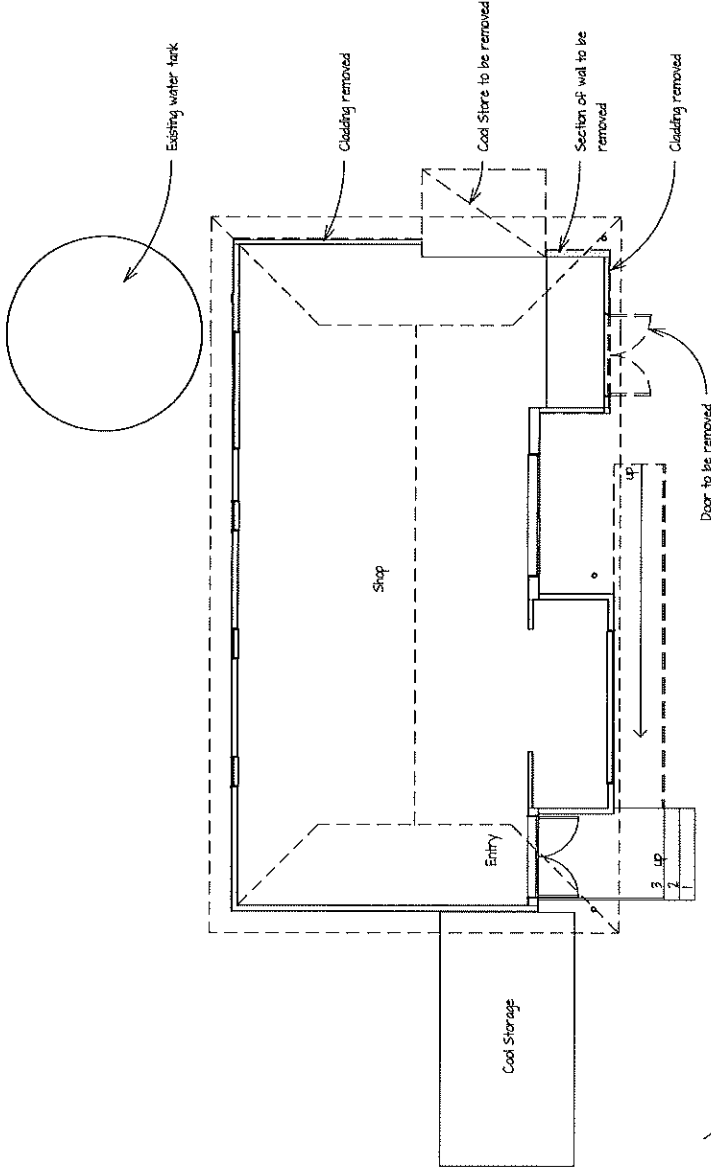
**Proposed Alterations for  
S&J McArthur  
781 Outram-Mosgiel Road  
Taieri**

SHEET TITLE

**Existing Site Plan**

| TRADE | Architectural | DESIGNED      | FWJ   | CHECKED   | RJW  |
|-------|---------------|---------------|-------|-----------|------|
| DATE  | OCT 2018      | SCALE         | 1:200 | JOB NO.   | 1879 |
| DRAWN | TW            | CDL REFERENCE | 1879  | REVISION  | A    |
|       |               |               |       | SHEET NO. | A1.1 |

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Existing Floor Plan  
1:100

LEGEND:

TO BE REMOVED  
EXISTING WALLS

JOB TITLE:

Proposed Alterations for  
S&J McArthur  
781 Outram-Mosgiel Road  
Tairāi

SHEET TITLE:

Existing Floor Plan

TRADE: Architectural

DESIGNED: RJW

CHECKED: RJW

DATE: OCT 2018

SHEET NO. 1879

DRAWN: TW

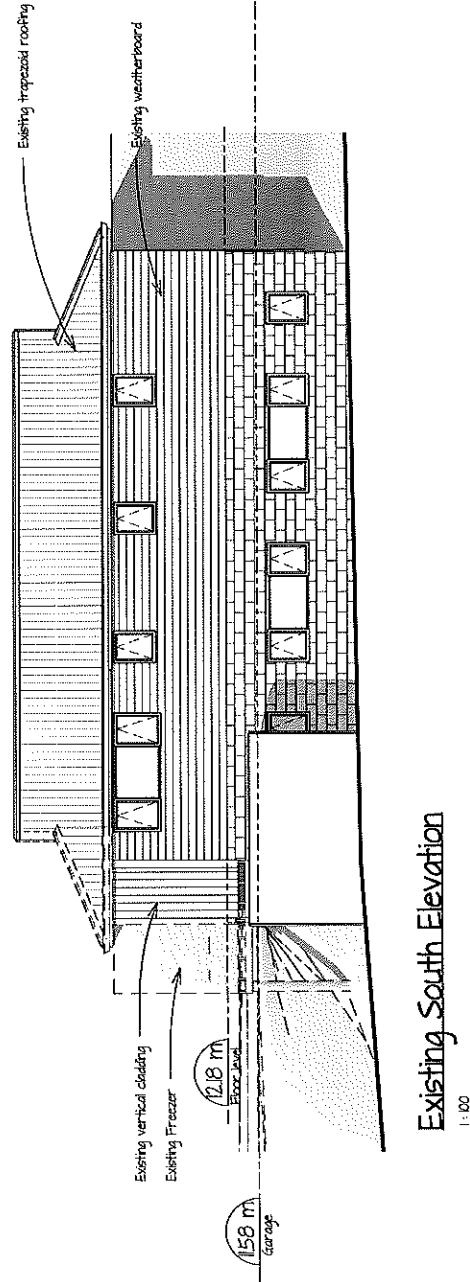
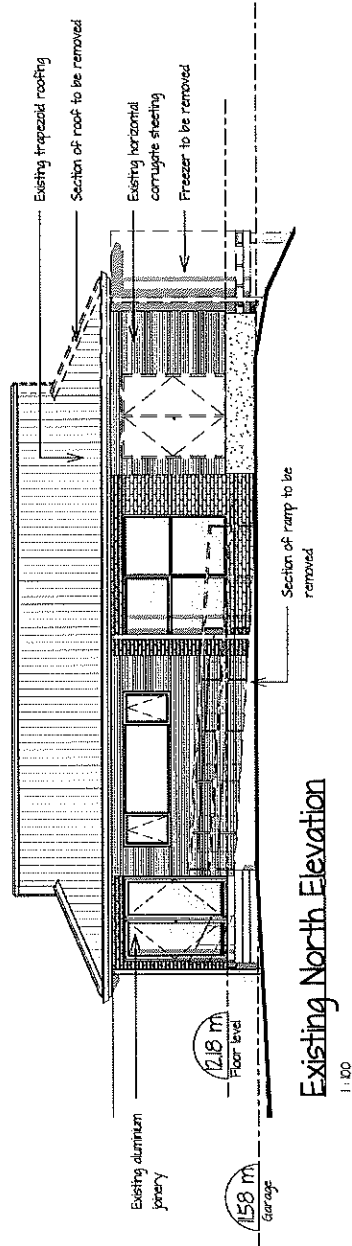
REVISION: A

SCALE: 1:100

CAO REFERENCE: 1878

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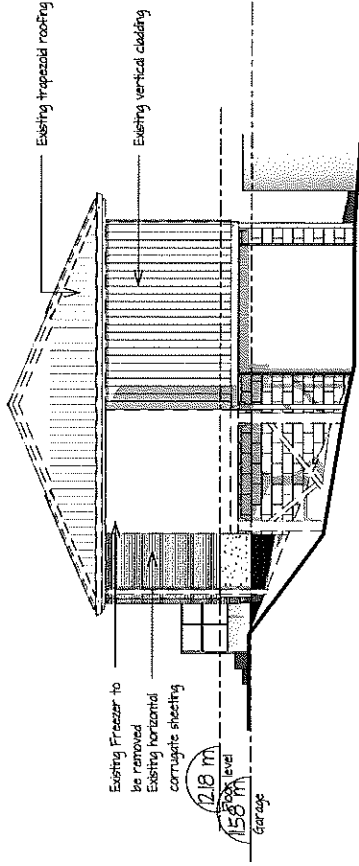
| Revision Schedule |       |               |
|-------------------|-------|---------------|
| Ref               | Date  | Description   |
| A                 | 03/08 | Sketch Design |

| LEGEND |                |
|--------|----------------|
|        | TO BE REMOVED  |
|        | EXISTING WALLS |

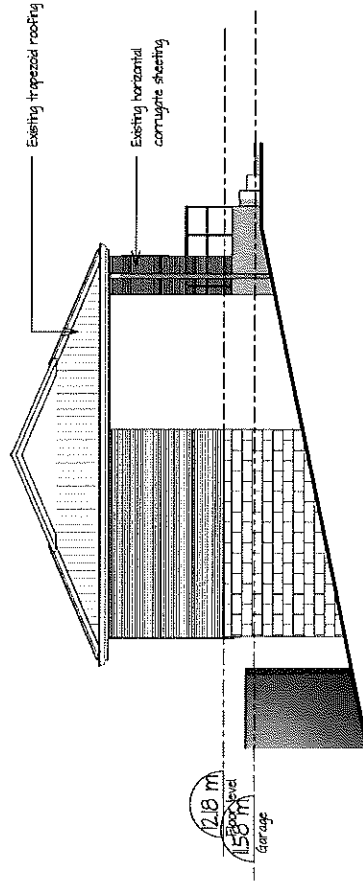
|                          |  |               |  |                                  |  |
|--------------------------|--|---------------|--|----------------------------------|--|
| JOB TITLE                |  | DESIGNED      |  | CHECKED                          |  |
| Proposed Alterations for |  | RJW           |  | RJW                              |  |
| S&J McArthur             |  | JOB NO.       |  | SHEET NO.                        |  |
| 781 Outram-Mosgiel Road  |  | 1879          |  | A3.0                             |  |
| Taieri                   |  | REVISION      |  | A                                |  |
| TRADE                    |  | SCALE         |  | DRAWN                            |  |
| Architectural            |  | 1:100         |  | TW                               |  |
| DATE                     |  | CAU REFERENCE |  | ORIGINAL SHEET SIZE A3 (420x594) |  |
| OCT 2018                 |  | 1879          |  | 27/10/2018 4:02:57 p.m.          |  |
| © COPYRIGHT              |  |               |  |                                  |  |

SHEET TITLE  
Existing Elevations





Existing West Elevation  
1:100



Existing East Elevation  
1:100

LEGEND:  
 [---] TO BE REMOVED  
 [---] EXISTING WALLS

| Revision Schedule |      |               |
|-------------------|------|---------------|
| Ref.              | Date | Description   |
| A                 | 0000 | Sketch Design |

JOB TITLE  
**Proposed Alterations for  
 S&J McArthur  
 781 Outram-Mosgiel Road  
 Taieri**

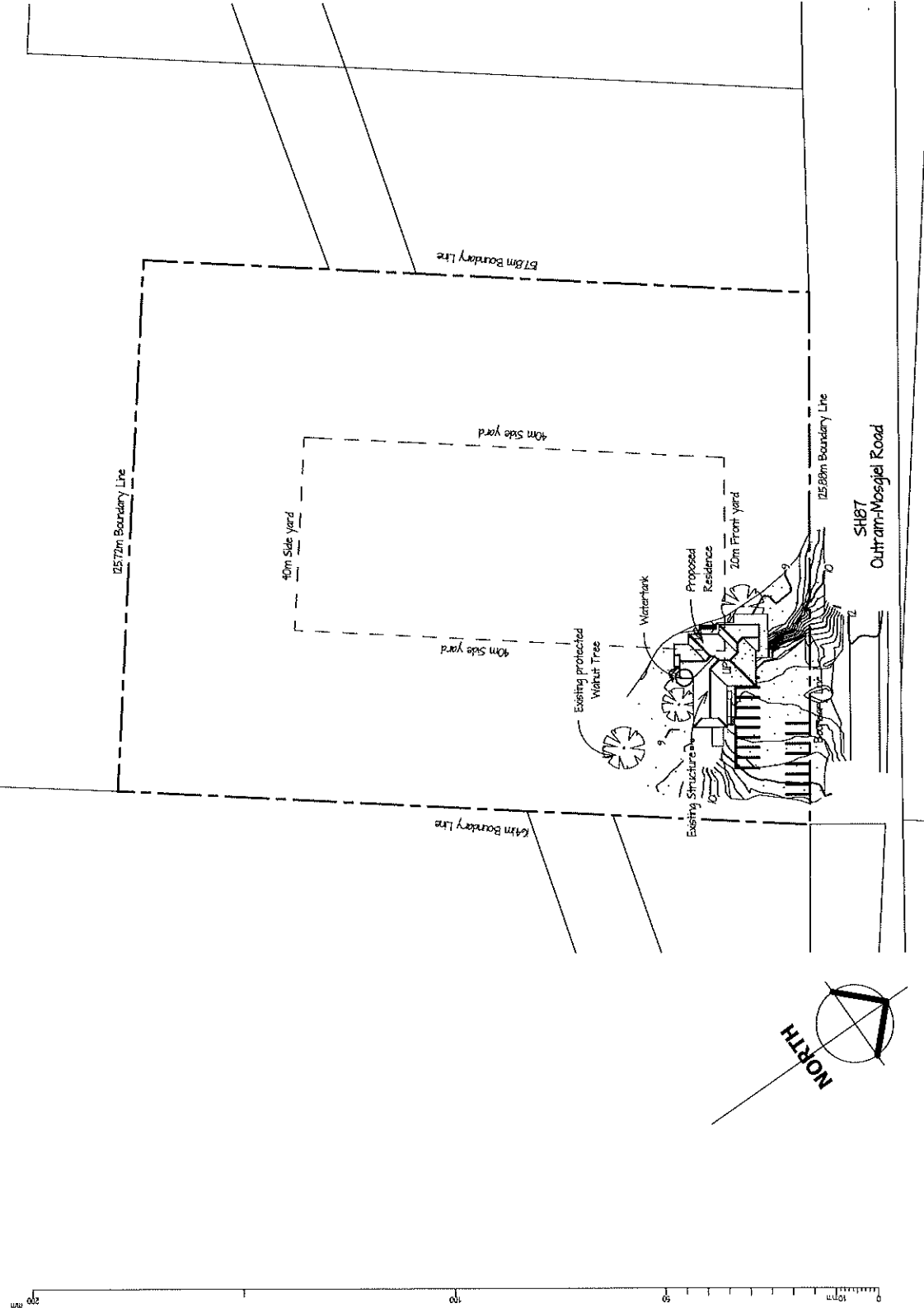
SHEET TITLE  
**Existing Elevations**

| TRADE       | Architectural         | DESIGNED<br>RJW | CHECKED<br>RJW |
|-------------|-----------------------|-----------------|----------------|
| DATE        | SCALE                 | JOB NO.         | SHEET No.      |
| OCT 2018    | 1:100                 | 1879            | A3.1           |
| DRAWN<br>TW | CAU REFERENCE<br>1879 | REVISION<br>A   |                |

ORIGINAL SHEET SIZE A3 (420x594) 20/10/2018 4:02:58 p.m. © COPYRIGHT

Sketch Design

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes



Proposed Location Plan  
1:1000

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

| Revision Schedule |                    |
|-------------------|--------------------|
| Ref.              | Description        |
| A                 | 000B Sketch Design |

**Legal Description**  
781 Outram-Mosgiel Road Riverside

Outram

LOT 1

DP 7449

Valuation number : 279-0200

Property number : 5055994

**Site Coverage**

Site Area = 2029m<sup>2</sup>

Existing site coverage = 85.05m<sup>2</sup> - 0.009%

Proposed Site Coverage = house and existing shop

228m<sup>2</sup> + proposed decks etc = 949m<sup>2</sup> - 0.07%

**Zoning**

Wind

• High

Elevation

• 1m

Snow

• 0.9gpa

Earthquake

• Zone 1

Corrosion

• Zone B

Zone

• Rural

Climate

• Zone 3

Rainfall intensity

• 40.50

JOB TITLE

Proposed Alterations for  
S&J McArthur

781 Outram-Mosgiel Road  
Taieri

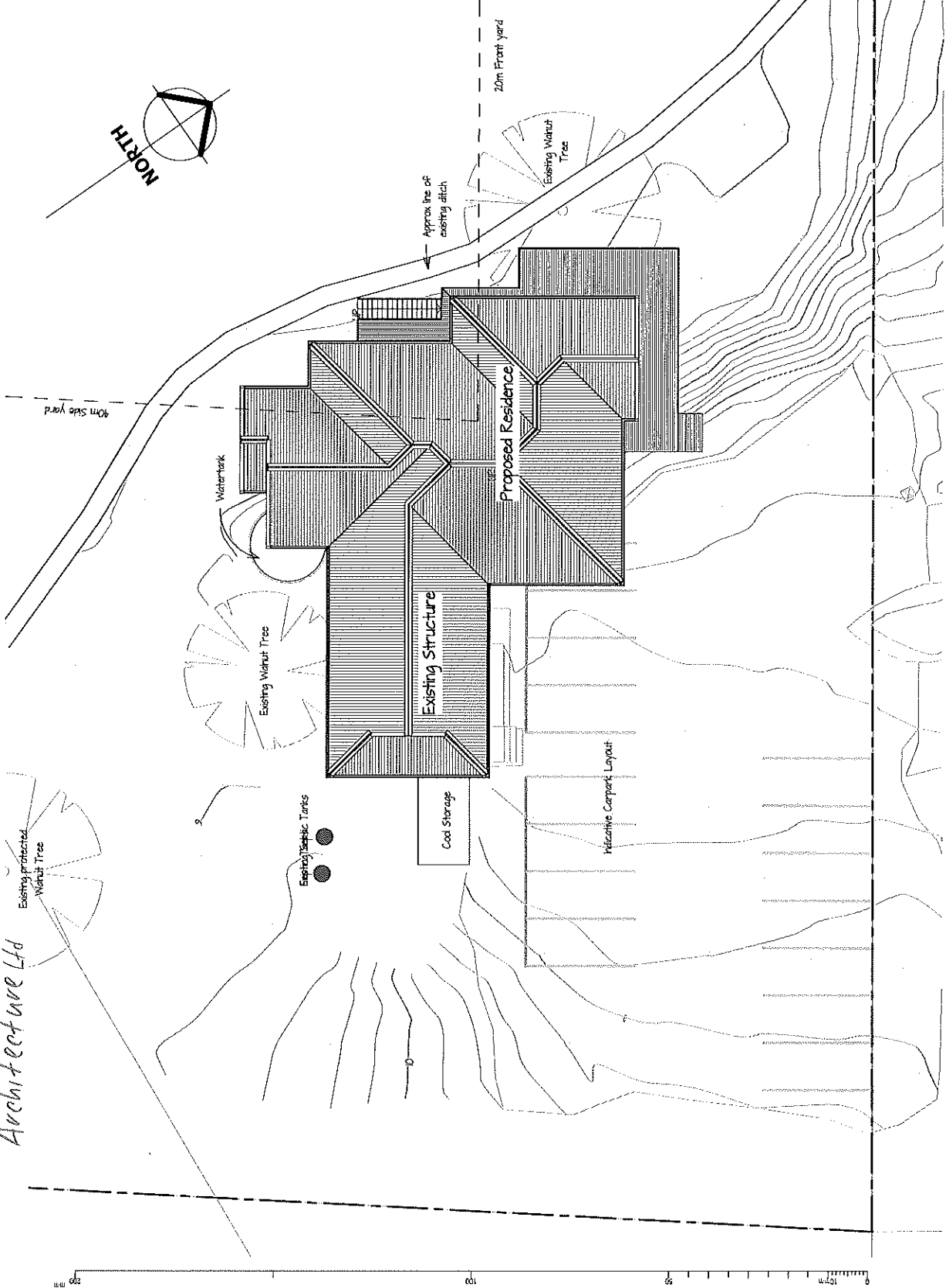
SHEET TITLE

Proposed Location Plan

| TRADE | Architectural | DESIGNED      | CHECKED |
|-------|---------------|---------------|---------|
|       |               | RJW           | RJW     |
| DATE  | OCT 2018      | SCALE         | 1:1000  |
| DRAWN | TW            | CAD REFERENCE | 1879    |
|       |               | REVISION      | A       |
|       |               | JOB NO.       | 1879    |
|       |               | SHEET NO.     | A4.0    |

ORIGINAL SHEET SIZE A3 (420x594) 27/10/2018 4:02:58 p.m. © COPYRIGHT

Sketch Design



| Revision Schedule |       |               |
|-------------------|-------|---------------|
| Ref               | Date  | Description   |
| A                 | 01/08 | Sketch Design |

**Legal Description**  
781 Outram-Mosgjel Road Riverside  
Outram  
LOT 1  
DP 7443  
Valuation number : 2794/0200  
Property number : 505994

**Site Coverage**  
Site Area : 20234m<sup>2</sup>  
Existing site coverage : 8505m<sup>2</sup> - 0.004%  
Proposed Site Coverage : house and existing shop  
2580m<sup>2</sup> + proposed decks 64m<sup>2</sup> + 344m<sup>2</sup> - 0.017%

- Zoning**
- High
  - Wind
  - Elevation
  - Snow
  - Earthquake
  - Corrosion
  - Zone
  - Climate
  - Rainfall intensity : 40-50

**JOB TITLE**  
Proposed Alterations for  
S&J McArthur  
781 Outram-Mosgjel Road  
Taieri

**SHEET TITLE**  
Proposed Site Plan

| TRADE | Architectural | DESIGNED      | CHKD    | RJW      | CHKD | RJW       |
|-------|---------------|---------------|---------|----------|------|-----------|
| DATE  | OCT 2018      | SCALE         | 1 : 200 | JOB NO.  | 1879 | SHEET NO. |
| DRAWN | TW            | CAU REFERENCE | 1879    | REVISION | A    | A4.1      |

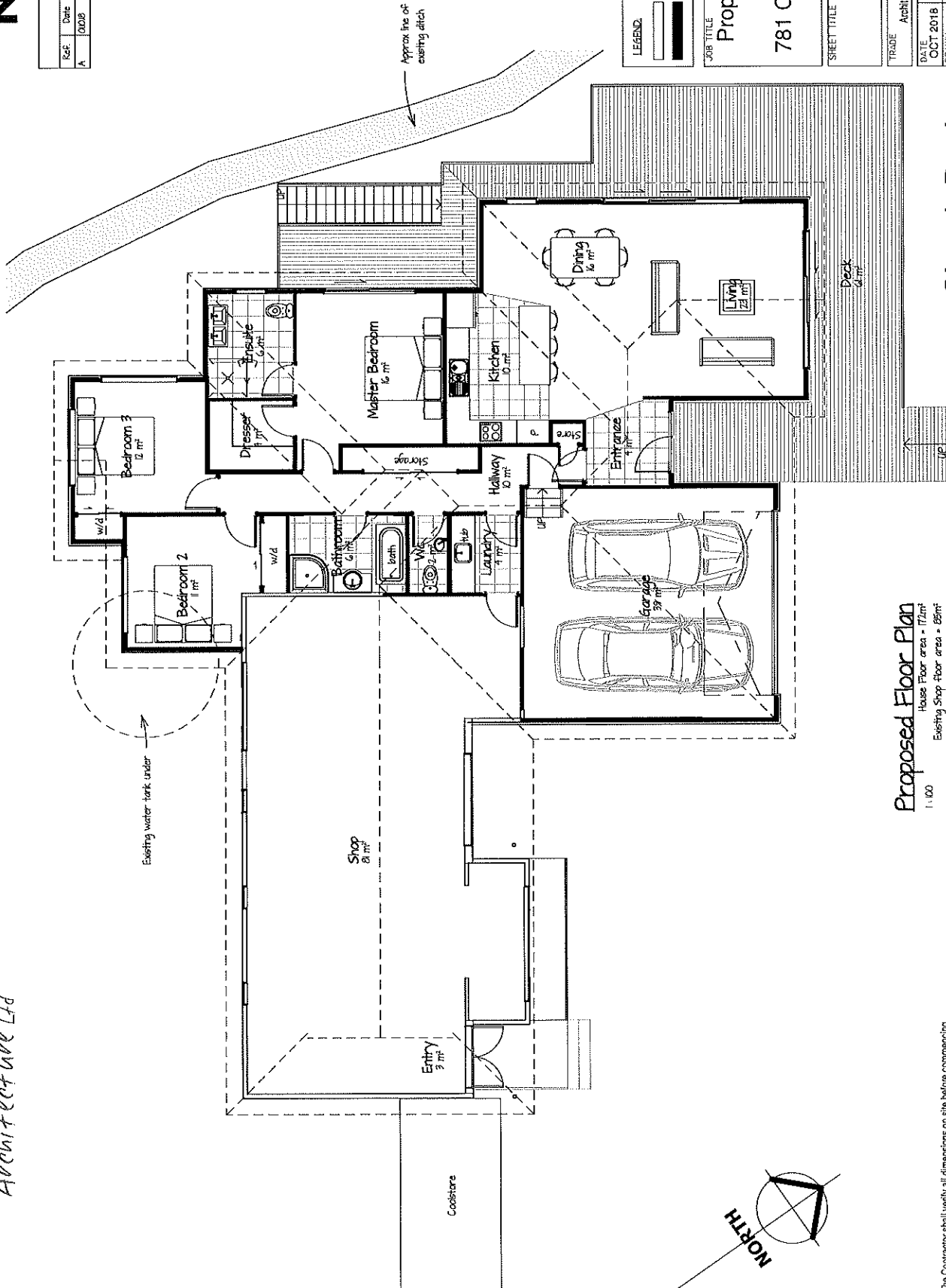
The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

**Proposed Site Plan**  
1 : 200

N SH87 OUT  
Outram-Mosgjel Road

**Sketch Design**

| Revision Schedule |       |               |
|-------------------|-------|---------------|
| Ref.              | Date  | Description   |
| A                 | 04/08 | Sketch Design |



**Proposed Floor Plan**  
House Floor area = 172m<sup>2</sup>  
Existing Shop floor area = 85m<sup>2</sup>  
1:100

The Contractor shall verify all dimensions on site before commencing construction. Do not scale off drawings. Documents are for obtaining building consent and construction not suitable for fixed price contracts or quotes

LEGEND:  
EXISTING WALLS  
NEW WALLS

JOB TITLE

Proposed Alterations for  
S&J McArthur  
781 Outram-Mosgiel Road  
Taieri

SHEET TITLE

Proposed Floor Plan

| TRADE | Architectural | DESIGNED      | PUW   | CHECKED  | PUW  | SHEET NO. |
|-------|---------------|---------------|-------|----------|------|-----------|
| DATE  | OCT 2018      | SCALE         | 1:100 | JOB NO.  | 1879 | A5.0      |
| DRAWN | TW            | CAD REFERENCE | 1879  | REVISION | A    |           |

ORIGINAL SHEET SIZE A1 (1000x700) 2/10/2018 4:03:00 p.m. © COPYRIGHT

Sketch Design

## **SUBMISSIONS**

**[710924]**

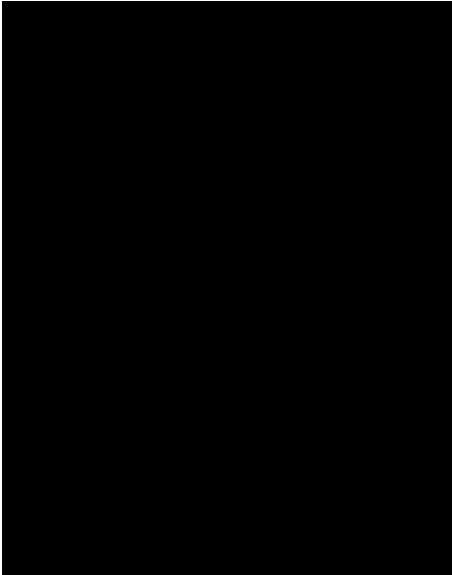
First name

Angela

Last name

Young

Organisation/On behalf of:



I wish the following to be used as the address for service

Email

If other please specify

I would like my contact details to be withheld:

No

I am a trade competitor for the purposes of section 308B of the Resource Management Act 1991

No

I am directly affected by an effect of the subject matter of the submission that -

No

Your position

I support this application

The specific parts of the application that this submission relates to are

Providing the local economy with jobs, and healthy locally grown food

My submission is

I support this submission to the council as it is increasingly harder for the public to buy and have access to locally grown fresh produce. Our society is growing and that is putting pressure on resources. At the moment there is 1 market garden left in Outram when once upon a time there were numerous - why? because big corporates like supermarkets are pushing the little people out who want to do this type of thing and also people are selling outram land for Dairy Farming and subdivisions. Where will food come from in the future if we don't support local? it is our right as citizens of NZ to be able to access a safe, fresh, sustainable and healthy food supply, we need to eat more Vegetables and Fruit to combat obesity related diseases and by providing locals a chance to access this we will have a healthier local community and profits stay in the community too!

I seek the following decision from the Council

to approve this submission wholeheartedly with no restrictions or conditions, and i hope they see the benefits to the wider community

Supporting documentation

No file uploaded

Supporting documentation

No file uploaded

Do you wish to speak in support of your submission to the Consent Hearings Committee

No

If others make a similar submission, I will consider presenting a joint case with them at a hearing

Yes

Request for Independent Hearings Commissioner(s)

No

I have read and understand the Privacy statement

Yes

**Topic: Submission - Resource Consents**

**[713913]**

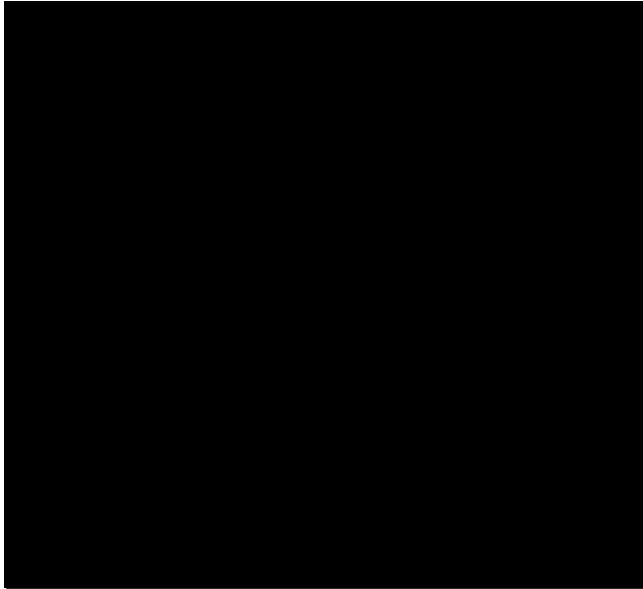
First name

Kate

Last name

Botting

Organisation/On behalf of:



I wish the following to be used as the address for service

Email

If other please specify

I would like my contact details to be withheld:

No

I am a trade competitor for the purposes of section 308B of the Resource Management Act 1991

No

I am directly affected by an effect of the subject matter of the submission that -

No

Your position

I support this application

The specific parts of the application that this submission relates to are

See submission attached received by email

My submission is

See submission attached received by email

I seek the following decision from the Council

See submission attached received by email

Supporting documentation

LUC-2018-669-Submission-K-Botting.pdf, type application/pdf, 14.5 KB

Supporting documentation

No file uploaded



Do you wish to speak in support of your submission to the Consent Hearings Committee

No

If others make a similar submission, I will consider presenting a joint case with them at a hearing

No

Request for Independent Hearings Commissioner(s)

No

I have read and understand the Privacy statement

Yes

**From:** [Kate Botting](#)  
**To:** [Resource Consent Submissions](#)  
**Subject:** Fwd: LUC-2018-669  
**Date:** Wednesday, 24 April 2019 10:40:20 p.m.

---

----- Forwarded message -----

**From:** Kate Botting [REDACTED]  
**Date:** Wed, Apr 24, 2019 at 6:45 AM  
**Subject:** LUC-2018-669  
**To:** <[reconsent.submission@dcc.govt.nz](mailto:reconsent.submission@dcc.govt.nz)>  
**Cc:** <[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)>, John Eaton <[jweed56@hotmail.com](mailto:jweed56@hotmail.com)>

Dear sir/Madam

My farm Clairinch Enterprises is the neighboring farm and I fully support this application to retain this land as residential and continue as a retaining outlet for fresh produce.

I am happy to support and help the MacArthurs in any way possible.

I have been part of the Outram charitable trust and part of my project was involved in making cycling safe and we reviewed looking at many options such as extra space on the bridge for cycles and using the flood banks and widening the road for share access. At the time Lions organised an initiative of opening up the bank once or twice a year as a fundraising activity. This has been very successful, as it gave farmers time to organise their stock. It does demonstrate that we need safe off road safe areas for families to exercise and the need for good town planning.

Another option is reducing the speed limit to the riversdie road from Outram. As the Outram village continues to grow, there will only be an increasing need to make off-road cycleways and walking tracks. My farm has a paper road access from the Axes drive and up the hill that joins farm tracks along the hill to silver peaks, The Brensel's have an odd piece of land by the road. where I have limited access to farm activities on that side of the road. Robert Buchanan used to have a home there. (great uncle) but the highway has moved many times over the years since the 1850s when my great, great grandfather started farming on Clairinch.

I have had many incidents due to the speed of traffic on a busy road, including bales rolling of trucks, though my fence, a hit and run incident when one of my dogs was hit by a car and a vehicle rolled off the road and onto my paddock when I happened to be present. I am sure that there are plenty of reported incidents at the junction to the Outram glen also, not just the berry side.

Yours faithfully

Kate Botting

**COUNCIL OFFICER'S EVIDENCE  
AND  
OTAGO REGIONAL COUNCIL**



# Memorandum

**TO:** John Sule, Senior Planner

**FROM:** Monique Goodhew, Environmental Health Officer

**DATE:** 19<sup>th</sup> of November 2018

**SUBJECT:** Land Use Consent – Dwelling on undersized rural site and expanded fruit and vegetable retailing  
LUC-2018-669 - 781 Outram-Mosgiel Road Taieri

Environmental Health has received an application for Land use Consent – 2018 – 669, 781 Outram – Mosgiel Road Taieri for residential activity to be established at an existing berry farm and a commercial activity. The proposal is to establish a dwelling on the site at 781 Outram-Mosgiel Road and to extend the scope of fruit and vegetable retailing on site. This premise is currently registered with Environmental Health as a National Programme three under The Food Act 2014.

Environmental health comments on this application relate to noise. The following standards, guidelines, plan rules and legislative requirements are applicable for consideration.

## **District Plan Noise Limits**

The proposed activity is situated in a rural zone under both the operative and the 2GP district plans. The noise levels under the operative district plan can be seen in Table 1. Please note that these noise limits apply until the 2GP appeal period closes, which is scheduled for the 19<sup>th</sup> of December 2018. If these limits are not appealed the 2GP noise limits outlined in Table 2 and 3 will then apply to the proposed activity.

Tables 2 and 3 below identify the noise limits under the 2GP and include higher noise allowance for when there is no noise sensitive activity within 20 meters of the boundary. Residential activity is considered a noise sensitive activity; therefore the noise limits up until there is residential activity at this site can be seen in Table 2. As soon as there is residential activity within 20 meters of the boundary Table 3 outlines the noise limits that must then be adhered to.

The proposal must operate within the noise limits as set out by the operative district plan until such time as the 2GP noise limits are in place. These limits apply when not conducting construction work.

**Table 1:** Operative district plan rural noise limits:

| Time Period                    | L10 Limit (dBA) |
|--------------------------------|-----------------|
| Daytime (8am to 6pm daily)     | 55 dBA          |
| Night time (9pm to 7am daily ) | 40 dBA          |

**Table 2:** 2GP rural noise limits when there are no noise sensitive activities within 20 meters of the boundary:

| Time Period                   | LAeq Limit (dBA)                       |
|-------------------------------|----------------------------------------|
| Daytime (7am to 7pm daily)    | 60 dB LAeq (15 Minute)                 |
| (7pm to 10pm daily )          | 60 dB LAeq (15 Minute)                 |
| Nigh time (10pm to 7am daily) | 60 dB LAeq (15 Minute)<br>85 dB LAFmax |

**Table 3:** 2GP rural noise limits when there is a noise sensitive activity:

| Time Period                   | LAeq Limit (dBA)                       |
|-------------------------------|----------------------------------------|
| Daytime (7am to 7pm daily)    | 55 dB LAeq (15 Minute)                 |
| (7pm to 10pm daily )          | 50 dB LAeq (15 Minute)                 |
| Nigh time (10pm to 7am daily) | 40 dB LAeq (15 Minute)<br>70 dB LAFmax |

**Construction Noise Limits**

The period of proposed construction applied for by the applicant is expected to be of 'Typical duration'. The New Zealand Standard Acoustics – Construction Noise (NZS 6803:1999) states that the "Long term duration" of construction, means construction work at any one location with a duration exceeding 20 weeks.

Construction shall be limited to the times set out below and shall comply with the following noise limits for 'Long term duration' as per New Zealand Standard Acoustics – Construction Noise NZS 6803:1999.

**Table 4 – Recommended upper limits for construction noise received in residential zones and dwellings in rural areas.**

| Time of the week            | Time Period | Duration of work          |                        |                              |                        |                             |                        |
|-----------------------------|-------------|---------------------------|------------------------|------------------------------|------------------------|-----------------------------|------------------------|
|                             |             | Typical duration<br>(dBA) |                        | Short-term duration<br>(dBA) |                        | Long-term duration<br>(dBA) |                        |
|                             |             | <i>L<sub>eq</sub></i>     | <i>L<sub>Max</sub></i> | <i>L<sub>eq</sub></i>        | <i>L<sub>Max</sub></i> | <i>L<sub>eq</sub></i>       | <i>L<sub>Max</sub></i> |
| Weekdays                    | 0630-0730   | 60                        | 75                     | 65                           | 75                     | 55                          | 75                     |
|                             | 0730-1800   | 75                        | 90                     | 80                           | 95                     | 70                          | 85                     |
|                             | 1800-2000   | 70                        | 85                     | 75                           | 90                     | 65                          | 80                     |
|                             | 2000-0630   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
| Saturdays                   | 0630-0730   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
|                             | 0730-1800   | 75                        | 90                     | 80                           | 95                     | 70                          | 85                     |
|                             | 1800-2000   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
|                             | 2000-0630   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
| Sundays and Public Holidays | 0630-0730   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
|                             | 0730-1800   | 55                        | 85                     | 55                           | 85                     | 55                          | 85                     |
|                             | 1800-2000   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |
|                             | 2000-0630   | 45                        | 75                     | 45                           | 75                     | 45                          | 75                     |

The applicant is reminded that consent for this application does not excuse the applicant of their duty under Section 16 of The Resource Management Act 1991 whereby a noise can still be deemed a noise nuisance of unreasonable nature whether it complies with a District Plan noise limit or not. The applicant is reminded that the Best Practicable Option should continue to be applied to ensure that the noise levels emitted do not create a noise nuisance.

**Reverse sensitivity**

The application does not identify there being any potential for reverse sensitivity issues generated due to the close proximity of the highway. Therefore our primary concern in relation to public health relates to reverse sensitivity issues; in particular the impact that noise from the existing highway on the residents/occupants of the proposed residential dwelling.

**Resource Management Act 1991**

Please note that section 16 of the Resource Management Act 1991 places a duty on occupiers to avoid creating unreasonable noise.

Resource Management Act 1991

S.16 Duty to avoid unreasonable Noise

- (1) Every occupier of land shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.

**Recommendations**

Overall Environmental Health has some concerns with regards to reverse sensitivity and recommends that the applicant reconsiders this matter. We suggest that the applicant is requested to provide further information on reverse sensitivity, which we will further comment on once it is received.

# Memorandum

**TO:** City Planning

**FROM:** Policy Analyst, 3 Waters

**DATE:** 2 July 2019

**LUC-2018-669**      **ESTABLISH RESIDENTIAL ACTIVITY +  
EXPAND SCOPE OF BUSINESS**

**SUBJECT:**      **781 OUTRAM-MOSGIEL ROAD, TAIERI**

**3 WATERS COMMENTS**

## 1. The proposed activity

Landuse consent is sought from DCC to establish a residential dwelling and expand the scope of the business at 781 Outram-Mosgiel Rd, Taieri. The site is within the Rural zone in both the current District Plan and the the Second Generation District Plan (2GP).

### ***Land use consent description***

The Council has received an application for a residential activity to be established at an existing berry farm and a commercial activity. The proposal is to establish a dwelling on the site at 781 Outram-Mosgiel Road and to extend the scope of fruit and vegetable retailing on the site.

## 2. Infrastructure requirements

### ***Dunedin Code of Subdivision and Development 2010.***

All aspects of this development shall be undertaken in accordance with the requirements of the Dunedin Code of Subdivision and Development 2010.

### ***Water services***

The proposed activity is located within the Rural zone and within the Outram Reservoir Supply water boundary as shown in Appendix B of the *Dunedin City Council Water Bylaw 2011*. There is an existing 20mm metered connection to the DCC 50mm water supply pipe within Outram-Mosgiel Road – this may be retained for this development.

Non-domestic water connections are metered and require a boundary RPZ backflow prevention device. This property does have a water meter, however there is no RPZ and this is required. The RPZ must be installed downstream of the water meter, just inside of the customers boundary. The details of the device and its proposed location will be approved through the building consent process.

### ***Firefighting requirements***

All aspects relating to the availability of the water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies.

### ***Wastewater services***

As the proposed activity is located within the Rural zone, there are no reticulated wastewater services available for connection. Any effluent disposal shall be to a septic tank and effluent disposal system which is to be designed by an approved septic tank and effluent disposal system designer.

### ***Stormwater services***

As the proposed activity is located within the Rural zone, there is no stormwater infrastructure or kerb and channel discharge points. Disposal of stormwater is to water tables and/or watercourses onsite, or to suitably designed onsite soak-away infiltration system or rainwater

harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.

To allow adequate pervious area for natural stormwater drainage, the maximum site coverage specified in the District Plan must be complied with. Please note that there are new site coverage rules in the 2GP for both building coverage and maximum site imperviousness.

### **Private drainage**

All private drainage matters will be dealt with at time of Building Consent.

### **3. Consent conditions**

The following conditions should be imposed on any resource consent granted

1. A boundary RPZ backflow prevention device must be installed downstream of the existing water meter, just inside of the customers boundary.

### **4. Advice notes**

The following advice notes may be helpful for any resource consent granted:

#### **Code of Subdivision & Development**

- All aspects of this development shall be compliant with Parts 4, 5 and 6 of the Dunedin Code of Subdivision and Development 2010.

#### **Water services**

- Installation of a boundary backflow prevention device requires a building consent, or an exemption from a building consent. Further information is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
- All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.

#### **Erosion and sediment control**

- 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).

#### **Private drainage matters**

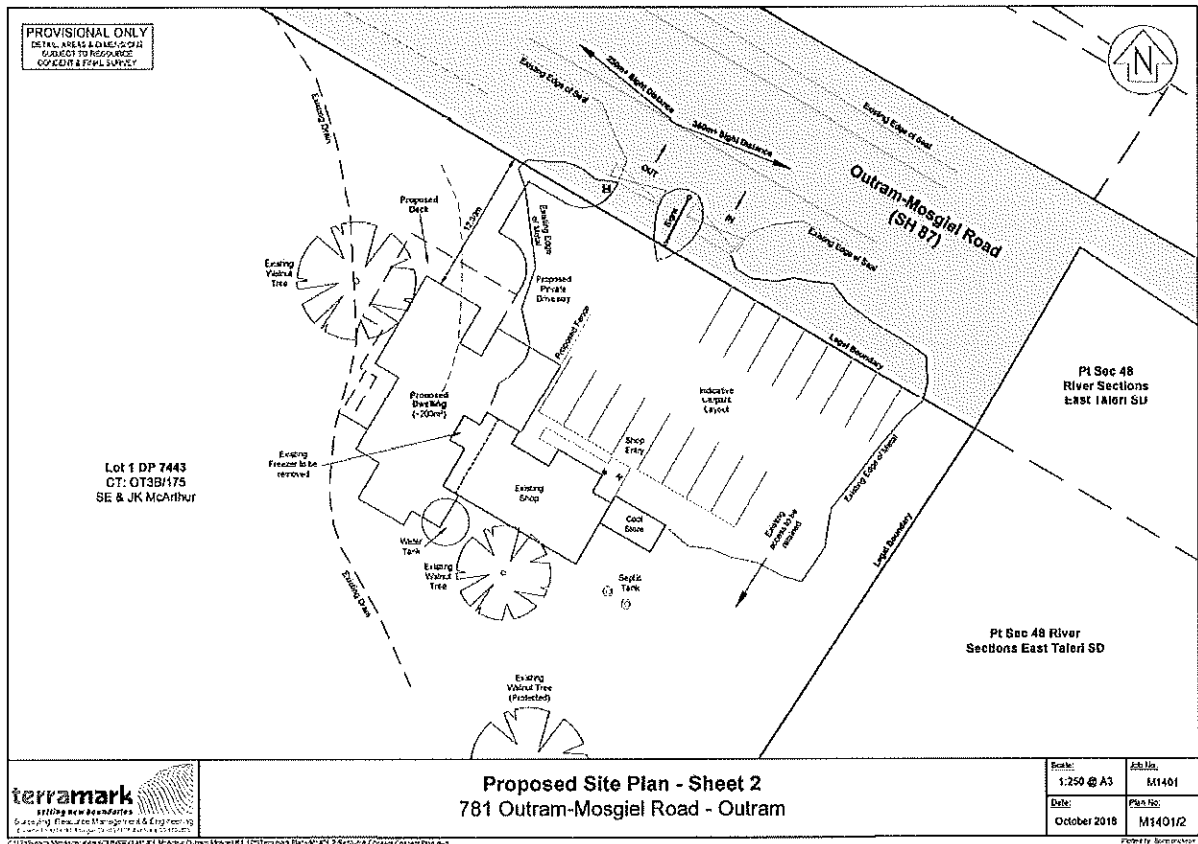
- Private drainage issues and requirements (including any necessary works) are to be addressed via the Building Consent process.
- Certain requirements for building on this site may be stipulated via the building consent process and are likely to include the following points:
  - Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
  - 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.

Policy Analyst

**3 Waters**  
**Dunedin City Council**



Technical Support Officer, Building Services



**Phil Marshall**

---

**From:** MWH Hazards Team <MWHHazardsTeam@stantec.com>  
**Sent:** Tuesday, 27 November 2018 11:27 a.m.  
**To:** John Sule  
**Cc:** MWH Hazards Team  
**Subject:** RE: Request for expert advice - LUC-2018-669 - 781 Outram-Mosgiel Rd

Hello John

We have assessed the application in relation to the hazard register, street files and available aerial photography. We have not visited the site.

We have the following comments to make regarding the application.

**Proposal**

The proposed activity is to construct a dwelling on the above site.

Site investigation reports have not been provided.

Plans for the proposal are provided within the application.

**Hazards**

From the Hazard Register, street files, and previously sent emails ; for both this title and nearby properties

- Hazard ID 10111: Intensified shaking, Earthquake Likely Amplification
- Hazard ID 11407: Liquefaction Domain C. The ground is predominantly underlain by poorly consolidated marine or estuarine sediments with a shallow groundwater table. There is considered to be a moderate to high likelihood of liquefaction-susceptible materials being present in some parts of the areas classified as Domain C.
- Hazard ID 11795: Contaminated Land

**Global Setting**

The underlying geology consists of alluvial material and the site is sloping by less than 12 degrees.

**Discussion**

The proposed earthworks are associated with the dwelling, driveway and carpark construction. No significant earthworks or retaining structures are proposed.

We recommend that the application not be declined on the ground of known natural hazards.

There are no general potential instabilities of concern

The proposal will not create or exacerbate instabilities on this or adjacent properties

**Advice**

The site lies in an area where underlying soils have been identified as having potential for amplified movement and liquefaction during a significant seismic event.

- The cases for seismic loading are normally addressed at building control stage.
- The Dunedin City Council Building Control Authority will ask for verification that the site is 'good ground' in accordance with NZS3604, Section 3.1.
- Further to this, we recommend that specific engineering design be required to address recognised potential liquefaction hazards.
- Specific Engineering Design, or exclusion of liquefaction risk may require investigation testing to 10m depth to quantify the potential for liquefaction for each dwelling.

**Conditions**

We recommend that the following conditions be required:-

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

- Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction
- Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction
- As-built records of the final extent and thickness of any un-engineered fill should be recorded
- Any new stormwater culverts shall be designed by appropriately qualified person/s and ensure that overland stormwater flows are not interrupted and not increase any adverse effects from local ponding during storm rainfall events.

Regards,

**Edward Guerreiro**

BEng Civil (Hons)  
Civil Engineer

Mobile: +64 21 866 028

Email: [edward.guerreiro@stantec.com](mailto:edward.guerreiro@stantec.com)

Stantec New Zealand  
134a Gorge Road,  
Queenstown 9300, New Zealand  
PO Box 13052,  
Christchurch 8141, New Zealand



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**From:** John Sule <[John.Sule@dcc.govt.nz](mailto:John.Sule@dcc.govt.nz)>

**Sent:** Monday, 19 November 2018 9:39 a.m.

**To:** Logan Copland <[Logan.Copland@dcc.govt.nz](mailto:Logan.Copland@dcc.govt.nz)>; Grant Fisher <[Grant.Fisher@dcc.govt.nz](mailto:Grant.Fisher@dcc.govt.nz)>; MWH Hazards Team <[MWHHazardsTeam@stantec.com](mailto:MWHHazardsTeam@stantec.com)>; Heveldt, Paul <[Paul.Heveldt@stantec.com](mailto:Paul.Heveldt@stantec.com)>; Environmental Health Administration <[healthadmin@dcc.govt.nz](mailto:healthadmin@dcc.govt.nz)>; Anna Johnson <[Anna.Johnson@dcc.govt.nz](mailto:Anna.Johnson@dcc.govt.nz)>; Hannah Moodie <[Hannah.Moodie@dcc.govt.nz](mailto:Hannah.Moodie@dcc.govt.nz)>; Jessica Mackinlay <[Jessica.Mackinlay@dcc.govt.nz](mailto:Jessica.Mackinlay@dcc.govt.nz)>; Kathryn Ward <[Kathryn.Ward@dcc.govt.nz](mailto:Kathryn.Ward@dcc.govt.nz)>; Lisa Fitzgerald <[Lisa.Fitzgerald@dcc.govt.nz](mailto:Lisa.Fitzgerald@dcc.govt.nz)>; Luke McKinlay <[Luke.McKinlay@dcc.govt.nz](mailto:Luke.McKinlay@dcc.govt.nz)>; Paula Myers <[Paula.Myers@dcc.govt.nz](mailto:Paula.Myers@dcc.govt.nz)>; Peter Christos <[Peter.Christos@dcc.govt.nz](mailto:Peter.Christos@dcc.govt.nz)>; Seta Sharif <[Seta.Sharif@dcc.govt.nz](mailto:Seta.Sharif@dcc.govt.nz)>; Resource Consents WWS-BC Comments <[resconsent.wwsbc-comments@dcc.govt.nz](mailto:resconsent.wwsbc-comments@dcc.govt.nz)>

**Subject:** Request for expert advice - LUC-2018-669 - 781 Outram-Mosgiel Rd




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## Dunedin City Council

### Memo on Potential Contamination and NES Issues for a Property at 781 Outram-Mosgiel Road, Taieri

#### Background

Dunedin City Council has asked Stantec New Zealand to provide comment on an application (LUC-2018-669) for land use consent for a change of use at a property located at 781 Outram-Mosgiel Road, Taieri, on part of which a residential dwelling is to be constructed. Specifically, DCC has requested Stantec to comment on the possible need for further consideration in the application on the potential for soils contamination on the property.

The property is a probable HAIL site (HAIL = the Hazardous Activities and Industries List established by the Ministry for the Environment) because of historical (and existing) fruit growing activities, specifically the growing of raspberries. This attracts the A10 category under the HAIL; i.e. "**Persistent** pesticide bulk storage or use including .... orchards...". No preliminary site investigation (PSI) or detailed site investigation (DSI) exists for the site.

#### Discussion

While this particular area of land (approximately 2 hectares in area) has been and currently is used for the growing of raspberries, no information is provided in the application about the need or otherwise for the use of pesticides to control pests on the raspberry canes. It may in fact be that raspberries are a crop that does not require the application of **persistent** pesticides of any sort although no information of this nature is provided in the application. Related to this, the storage of any agrichemicals used in the site activities is not specified; however, this may be because there is in fact little or no chemicals use.

There will be disturbance of soil on this (possible) HAIL site because of the need to install a significant number of piles (poles) on which to establish the new residential dwelling. Based on a review of the plans for the house, as provided in the application, at least 22 individual poles will be required to provide a suitable foundation for the building structure. It is not possible to determine what volume of soil requiring disposal would be created in the installation of the foundation poles because the necessary depth is unclear, as is the exact number of poles required. Also, from the supplied plans, some poles may require to be more substantial (i.e. thicker) than others, thus requiring more extensive excavations.

With respect to the permitted activity criteria of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (the NES) in regard to disturbance of soil (25m<sup>3</sup> per 500m<sup>2</sup> of land area) and off-site disposal of soil (5m<sup>3</sup> per 500m<sup>2</sup> of area) it is not possible based on the information provided to determine if either or both of soil disturbance or off-site disposal are likely to be within the permitted activity criteria. However, if HAIL status does not apply to the site, then neither does the NES.

#### Consent Status under the NES

If the applicant can confirm that, either, pesticides are not used on the raspberries or the type of pesticide used is NOT persistent in the accepted sense of this word in relation to agrichemicals, then category A10 of the HAIL would not apply and neither would the NES. Based on the reply received regarding this issue, the matter of next steps required, if any, in terms of possible consent under the NES can be determined.



Paul Heveldt  
Senior Environmental Specialist  
Stantec New Zealand

**Phil Marshall**

---

**From:** Warren Hanley <warren.hanley@orc.govt.nz>  
**Sent:** Wednesday, 6 March 2019 04:54 p.m.  
**To:** allan@cubittconsulting.co.nz  
**Cc:** 'Andrew Henderson'; John Sule; 'Paul Haddon'; 'Kaye McArthur'; Anita Dawe; Jean-Luc Payan  
**Subject:** 781 Outram-Mosgiel Road - Further ORC response.  
**Attachments:** RE: 781 Outram-Mosgiel Road- Request for ORC written approval

Hi Allan,

I don't believe applying for the any necessary DCC consents first is an issue for ORC, but I could understand DCC may want some read on ORC's position in making its decisions. While we obviously can't predetermine any decision before we receive those applications, can I say that "without prejudice" based on the information we've received to date there don't appear to be any significant 'red flags' of concern.

Below is some further comment from Jean-Luc in response to your email from 1 March:

*"The further information provided by Terramark partly address point 4 of my initial assessment. Terramark comments confirm that proposed house footprint is within/adjacent to the ORC Taieri River Floodway and the DCC 2GP Hazard 1 flood overlay and that the low-lying section of the property flooded in July 2017. I don't need more information at this stage. The potential effects of the proposal on the flood protection scheme (point 8 of my initial assessment) will need to be addressed, possibly part of the bylaw application.*

*I would like to clarify that the July 2017 peaked at 1700cumecs at Outram and not at 2000cumecs as initially recorded (the rating for high flows at Outram has been revised, refer to <https://www.orc.govt.nz/managing-our-environment/water/water-monitoring-and-alerts/water-notifications/taieri-at-outram-new-high-flow-rating-for-more-information>).*"

Note some direction on the assessment matters any application to ORC would need to cover. The 'point 8' Jean-Luc refers to reads:

*"Potential effects of the proposal on the flood protection scheme: the proposed building extension, although in the Taieri River floodway, is located on the margin of the floodway and given the proposed design (stilts) it is not likely that the proposed work will adversely affect the integrity of the scheme in this area. It is suggested to ask the applicant to assess and confirm this and to take this (flood hazard characteristics) into consideration in the design of the proposed work."*

For completeness and context, I've attached the original email with Jean-Luc's full initial assessment.

If you have any further questions, feel welcome to contact me.

Regards

Warren.



**Warren Hanley**  
 Senior Resource Planner  
 Liaison

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Otago Regional Council  
 70 Stafford St, Private Bag 1954,  
 Dunedin 9054

Phone (03) 470 7443 or 0800 474 082  
[www.orc.govt.nz](http://www.orc.govt.nz)

**From:** allan@cubittconsulting.co.nz <allan@cubittconsulting.co.nz>  
**Sent:** Friday, 1 March 2019 1:25 p.m.  
**To:** Warren Hanley <warren.hanley@orc.govt.nz>  
**Cc:** 'Andrew Henderson' <Andrew.Henderson@beca.com>; 'John Sule' <John.Sule@dcc.govt.nz>; 'Paul Haddon' <paul@terramark.co.nz>; 'Kaye McArthur' <berriesrus@xtra.co.nz>  
**Subject:** FW: [#TM-M1401] 781 Outram-Mosgiel Road - ORC response.

Hi Warren,

Please see below.

In your point 2, you refer to the need for bylaw and designation approval and that they will be processed together. My view is that the applicant should go through the land use consent process with the DCC before we apply for those approvals as if it is not successful, there is no point in applying for these. What is your position on that?

Thanks  
 Allan

**From:** Paul Haddon <paul@terramark.co.nz>  
**Sent:** Friday, March 1, 2019 12:24 PM  
**To:** Allan Cubitt <allan@cubittconsulting.co.nz>  
**Cc:** Kaye McArthur <berriesrus@xtra.co.nz>  
**Subject:** RE: [#TM-M1401] 781 Outram-Mosgiel Road - ORC response.

Hi Allan

---

Herewith my comments as requested, in response to Warren Hanley's Point 1 (7 February 2019 email).

Yes, it is acknowledged that the proposed house footprint is within/adjacent to the ORC Taieri River Floodway designation and the DCC 2GP Hazard 1 flood overlay.

However, in considering any implications of this, one must be aware of the house design level relative to recorded flood levels.

The July 2017 flood event is on record as one of the largest Taieri floods in terms of volume of floodwater. The river flow peaked at about 2000 cumecs.

Immediately following that flood event, Terramark was contracted by the ORC to survey the debris line. Our survey records disclose that the debris reduced level in the vicinity of the Applicant's shop/house site, was 10.5m (Dunedin Vertical Datum).

The shop has a floor level of 12.3m, some 1.8m above that flood level. The proposed house will also have a floor level of 12.3m, designed to ensure that flood water will not enter the building.

Regards

**Paul Haddon**  
*Surveying Consultant*

paul@terramark.co.nz  
 P: (03) 489 7107  
 F: (03) 489 0034  
 M: 021 246 6690  
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 107 Gordon Road, Mosgiel 9024  
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**From:** Allan Cubitt <[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)>  
**Sent:** Thursday, February 7, 2019 5:38 PM  
**To:** Paul Haddon <[paul@terramark.co.nz](mailto:paul@terramark.co.nz)>  
**Cc:** Kaye McArthur <[berriesrus@xtra.co.nz](mailto:berriesrus@xtra.co.nz)>  
**Subject:** Fwd: 781 Outram-Mosgiel Road - ORC response.

Hi Paul,

As you did the work for ORC on the levels can you please provide appropriate response. The raised area where the house will go clearly isn't in the flood zone.

Cheers,

Allan

Sent from my iPhone

Begin forwarded message:

**From:** Warren Hanley <[warren.hanley@orc.govt.nz](mailto:warren.hanley@orc.govt.nz)>  
**Date:** 7 February 2019 at 3:50:48 PM NZDT  
**To:** "'[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)'" <[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)>  
**Cc:** Jean-Luc Payan <[Jean-Luc.Payan@orc.govt.nz](mailto:Jean-Luc.Payan@orc.govt.nz)>, Anita Dawe <[Anita.Dawe@orc.govt.nz](mailto:Anita.Dawe@orc.govt.nz)>  
**Subject:** 781 Outram-Mosgiel Road - ORC response.

Hi Allan,

Thank you for your patience while we worked to make an initial assessment of this information and get a response back to you. I've discussed this with Jean-Luc from ORC's natural hazards team and we make the following comments:

1. It seems that large parts of the proposed building site will be within (on the margins) of the ORC designation area (Taieri River Floodway) and of the 2GP Hazard 1 (flood) overlay (see attached figures and DCC 2GP maps available at <https://dunedin.maps.arcgis.com/apps/webappviewer/index.html?id=f7fc69e07dba4db589ffe2ddcac4acc7>). Can you please clarify this as this appears to differ to the information supporting the application to DCC. Please see the attached pictures we've used to come to our position.
2. While they are separated by some distance at the proposed site, the property is located between the Lower Taieri Flood Protection Scheme floodbanks (Taieri River Floodway) and from our assessment of where the proposed development lies, bylaw approval will also be required for from ORC. Given approval under the designation will also need to be sought, the applications would be processed together. This process will provide for ORC considering your written approval request.
3. The drain situated on the property is not an ORC scheduled drain.

If you can let me know your response to point 1 then we can confirm any further position ORC.

Regards,

Warren.



## Warren Hanley

Senior Resource Planner  
Liaison

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Otago Regional Council  
70 Stafford St, Private Bag 1954,  
Dunedin 9054  
Phone (03) 470 7443 or 0800 474 082  
[www.orc.govt.nz](http://www.orc.govt.nz)

**From:** [allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz) <[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)>

**Sent:** Tuesday, 20 November 2018 11:07 a.m.

**To:** Warren Hanley <[warren.hanley@orc.govt.nz](mailto:warren.hanley@orc.govt.nz)>

**Subject:** FW: 781 Outram-Mosgiel Road

Hi Warren,

Please see the attached land use consent for 781 Outram-Mosgiel Rd. You will see that part of the site is affected by the Lower Taieri Flood Protection Scheme as shown in the proposed 2GP. However the house site does not appear to be affected by this and it will be designed so it is not affected by flood waters. We are hoping to gain your written approval for the proposal accordingly.

Please contact me if you have any further questions.

Kind regards, Allan Cubitt

**From:** [allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz) <[allan@cubittconsulting.co.nz](mailto:allan@cubittconsulting.co.nz)>

**Sent:** Sunday, November 4, 2018 3:10 PM

**To:** 'Planning Admin Team' <[planning@dcc.govt.nz](mailto:planning@dcc.govt.nz)>

**Subject:** 781 Outram-Mosgiel Road

Please find attached an application for 781 Outram-Mosgiel Road. Please email the appropriate invoice.

Thank you.

Kind Regards

*Allan Cubitt*

Cubitt Consulting Limited  
4 Norfolk Street  
St Clair



Dunedin  
New Zealand 9012

027 2083181

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27 March 2019

SE & JK McArthur  
C/- Allan Cubitt (Cubitt Consulting)  
4 Norfolk Street,  
Dunedin

Dear Allan,

**NZ Transport Agency Written Approval:** 781 Outram–Mosgiel Road (SH87) –SE & JK McArthur – Resource Consent to Establish a Residential Dwelling and Expand the Range of Produce Sold Onsite

Thank you for your request for written approval for your client's proposal for the following:

- To continue to operate a horticulture operation, retail outlet and associated cool store with direct access to State Highway 87 (SH87).
- To continue to sell 'real fruit' ice cream and yogurt from the site, where the berries are sourced from those grown onsite. It is noted that consumption onsite is not promoted.
- To establish a circa 200m<sup>2</sup> residential building.
- To expand the range of produce sold onsite by receiving locally grown produce from the Otago Catchment.

The above activities will be undertaken on Lot 1 DP 7443 held in Computer Freehold Register OT3B/175.

The applicant has volunteered the following conditions:

**Conditions:**

1. The dwelling must be designed, constructed and maintained to achieve an indoor design noise level of 40 dB  $L_{Aeq(24hr)}$  inside all habitable spaces.
2. Prior to either receiving produce not grown onsite; or, prior to the construction of the proposed dwelling, the following improvements to State Highway 87 and the site access at Crossing Place 31 shall be completed:
  - I. The consent holder shall upgrade and maintain Crossing Place 31, in accordance with the NZ Transport Agency's Planning Policy Manual Full Diagram E standard, with a minimum radius of 15m, and culverts and drainage as required.

Please note, no works shall be undertaken within State Highway 87 without the prior approval of the NZ Transport Agency pursuant to Section 51 of the Government Roadings Powers Act 1989. An application to carry out work within the State highway road reserve; and, an appropriate traffic management plan shall be submitted to our network contractor (Highway Highlanders [coastalotago@downer.co.nz](mailto:coastalotago@downer.co.nz)) at least ten working days prior to the commencement of any works on the state highway.

In signing this written approval, the Transport Agency understands that the consent authority must decide that it is no longer an affected person, and the consent authority must not have regard to any adverse effects of the proposed activity on the Transport Agency.

The Transport Agency understands that it may withdraw its written approval by giving written notice to the consent authority before the hearing, if there is one, or, if there is not, before the application is determined.

As such, please consider this letter as written approval per section 95E(3) of the Resource Management Act 1991. Please notify The NZ Transport Agency if changes to the application or volunteered conditions occur.

Yours sincerely

A handwritten signature in blue ink that reads "Richard Shaw". The signature is fluid and cursive, with the first name "Richard" and the last name "Shaw" clearly distinguishable.

Richard Shaw

**Principal Planner**

*Pursuant to authority delegated by NZ Transport Agency*

A copy of this approval has been sent to the Dunedin City Council

Andrew Henderson [Andrew.henderson@beca.com](mailto:Andrew.henderson@beca.com)

## Attachment 1 - Approved Site Plan

