

27 March 2026

Tomboy Limited
33 Russell Street
c/o
PO Box 5933
Dunedin 9058

Via email: conrad_a@xtra.co.nz

Dear Tansy and Paul

RESOURCE CONSENT APPLICATION:

**33 RUSSELL STREET, DUNEDIN
LUC-2025-146**

The Hearings Panel (the Panel), comprising Commissioner Louise Taylor (Chair), Councillor Cherry Lucas and Councillor Christine Gary, heard the application at a hearing on 3 March 2026.

The Panel visited the site after the hearing on the afternoon of Tuesday 3 March 2026. At the end of the public part of the hearing, the hearing was adjourned. The applicant provided their Right of Reply in writing on Friday 6 March. The Hearing was formally closed on 10 March 2026.

The Panel determines that the resource consent to establish a café on the ground floor and visitor accommodation on part of the ground floor and on the first floor of the site has been **granted**.

In reaching this decision we have considered:

- The application, the AEE and all supporting documents;
- The public submissions made on the application, including the submitters who presented at the hearing;
- The Council Officer's s42A report, together with the attached supporting reports;
- The pre-circulated material from the Applicant dated 16 February 2026;
- The Applicant's evidence presented at the hearing;
- The responses to our questions during the hearing process from all parties;
- The Applicant's Right of Reply dated 6 March 2026;
- Our observations from the visit to the site and its surrounds;
- The relevant provisions of both the pertinent planning documents, particularly the Partially Operative 2GP; and
- The relevant provisions of the RMA, most notably ss104, 104B and 104D.

The Hearing and Appearances

The applicant was represented by:

- Ms Tansy Hayden (Applicant)
- Mr Paul Keesing (Applicant)
- Mr Conrad Anderson (Consultant Planner)

Council staff attending were:

- Mr Phil Marshall (Advisor to Committee)
- Ms Jane O'Dea (Processing Planner, s42A Author)
- Ms Rebecca Murray (Governance Support Officer)
- Mr Reese Martin (Transport Planner)
- Ms Heather Bauchop (Heritage Advisor)
- Ms Alison Blair (Environmental Health)

There were two submitters present at the hearing:

- Ms Andrina Kitto owner of 41 Russell Street
- Ms Joanne Baldwin owner of 98 Arthur Street

Procedural Matters

No procedural matters were raised by any party.

Principal Issues of Contention

The principal issues of contention were as follows:

- The strong direction within the Dunedin District Plan (2GP) to avoid a proliferation of commercial activities in the residential zones as espoused by Policy 15.2.1.5 in particular.
- Noise and general amenity impacts on nearby owners and occupiers of residential properties. In this regard the effects on 98 Arthur Street were an obvious consideration for the Panel because of the proximity of this property's dwelling to the building on 33 Russell Street.
- Transportation and parking issues potentially generated by the café on the surrounding neighbourhood.
- Heritage matters in relation to 33 Russell Street being a Character Contributing building within the Dunedin District Plan.

Summary of Evidence

Introduction from Processing Planner

Ms O'Dea spoke to a summary of her 42A report, giving an overview of the proposal. She noted the Policies and Objectives of the Dunedin District Plan which were designed not to allow extensive commercial activity within the residential zones.

Nevertheless, Ms O'Dea noted that the proposal before the Panel, to use a residential property in part for a café, was going to lead to the re-use and financial investment in a property with heritage values.

While not a standard residential activity the proposed café and visitor accommodation activities could, with conditions on any consent granted and responsible management by the operator, maintain the amenity of the area.

Ms O'Dea confirmed her recommendation from the Section 42A report that consent be granted.

Extensive questions of clarification in relation to the Section 42A report from the Panel to Ms O'Dea then followed:

- Activity status not bundled because the visitor accommodation activity could be carried out quite separately from the café.
- In relation to the visitor accommodation aspect of the proposal this is very similar to residential activity (ie the permitted baseline).
- Ms O'Dea clarified for the Panel that the "working from home" activity in the District Plan did not allow for any employees not resident on the site.
- The applicant has not applied to exceed the District Plan noise limits.
- The nearby early childhood centre in Russell Street is considered to be part of the receiving environment.
- While seating on the footpath for café diners forms part of this application any consent granted would not absolve the applicant from obtaining the separate required approval under the appropriate road reserve bylaw.

Questions from the Panel then centred on proposed conditions, the Chair making it clear that such questions did not pre-empt the final outcome of the Panel's decision on the application.

In order to help the Panel further understand the effects of the proposal questions were asked of Council staff, prior to Applicant's presentation.

Mr Martin (Transport) said delivery vehicles larger than a van would not be a particular problem on the street network, that parking was not generally an issue in the area and he agreed many people were likely to walk to the café.

Ms Blair (Environmental Health) was of the view that restricting deliveries to a vehicle the size of a 99th percentile car was overly restrictive for a hospitality business. She also made the point that an off licence to sell wine, as proposed in the application, was not possible under liquor licensing legislation in a residential context.

Further questioning of Ms Blair by the Panel confirmed that the proposed exhaust air ducting for the kitchen should not be a noise issue if installed correctly. Her comment was made on the basis of her experience with many cafes over the years as an environmental health officer – Environmental Health as a rule did not receive noise complaints in relation to cafes.

From a heritage point of view Ms Bauchop was satisfied that a recent modification to the proposed ducting (whereby it was located internally prior to exhausting via a roof structure) was a better solution than the original proposal. It was noted that all kitchen ducting was illustrated on the south elevation of the latest plan set from *bell + co architecture ltd*.

The Applicant's Evidence

Prior to giving his evidence **Mr Anderson** pointed out that the agenda did not contain the latest set of plans. A short adjournment took place to allow the up-to-date plan set being from *bell + co architecture ltd* to be circulated to all parties in electronic and hard copy form.

Ms O'Dea confirmed the latest and correct plan set had been circulated as part of the limited notification process.

Mr Anderson then explained the layout of the proposal to the hearing touching on the venting system, the café entrance being through the chamfered corner of the building, screening of rubbish bins and proposed fencing along part of the boundary with 98 Arthur Street also to help with screening.

Mr Keesing (applicant) gave some background to the proposal. While originally a shop the building at 33 Russell Street had in more recent years had been used for student rental accommodation. In his view the café would be of benefit to the community as there was no other place in the area for people to meet and have a meal or buy a coffee. Mr Keesing said he and Ms Hayden were interested in developing this site only and were not looking at establishing a café anywhere else in the city. He said consultation with the community in the Arthur Street/Russell Street area had been positive. Mr Keesing had consulted with Ms Baldwin but had not received any response in recent times.

While the application includes a Visitor Accommodation element their intention at this stage is to live on the property. To this end internal renovations have begun but the work should not be seen as pre-empting the outcome of the hearing and the application to establish a café.

Questions from the Panel then centred around the size of delivery vehicles and the fact that there was no loading facility on site, previous experience with running a café and the hours of operation. Ms O'Dea said that proposed Condition 3, whereby staff were not to arrive or leave the site more than 30 minutes either side to the 7am to 10pm operating hours, was her condition aimed at reducing noise impacts on neighbours.

Submitter

Ms Andrina Kitto from 41 Russell Street (Rose Cottage) read out her statement.

She commented that her property had been used for visitor accommodation via Air BnB for the last decade and that she had owned the cottage since 2006. Her support for the proposed café related to her desire to see a building with heritage values refurbished and noted that its commercial use, while not continuous, dated from 1923.

Ms Joanne Baldwin (98 Arthur Street) read out her submission and was concerned about the adverse noise effects from a commercial activity and vehicles coming and going and also parking in front of her property on Arthur Street. As a former police officer and café owner (Wellington) Ms Baldwin was aware of the effects created by commercial activities in residential areas. The proximity of the proposed café to her home and potential noise from kitchen vents in the café were also of concern. She mentioned the 7 day a week nature of the café activity and her perceived negative impact on the value of her property.

Ms Baldwin mentioned the s104D tests contained in the RMA and urged the Panel not to grant consent. She also referred to the Dunedin District Plan objectives and policies relating to not allowing commercial activities in the residential zones and that the effects of the café would be more than minor on residents.

With respect to the parking issue Ms Baldwin mentioned that the hearings agenda referred to up to 207 additional vehicle trips per day (Page 90) could be generated by the proposal. This is in the context of the new roundabout at the Arthur Street/Russell Street intersection built about 5 years ago which eliminated some parks. While angle parking in Russell Street has since been introduced, this has not solved the parking problem. Ms Baldwin has unsuccessfully applied to Council in the past for a residential parking area to be established. Furthermore, Ms Baldwin considers Arthur Street is very busy and she is already concerned about the speed of traffic travelling north past her dwelling as it comes round the corner from the south. A delivery vehicle if parked where she normally parks would, in her view, create a very dangerous situation.

Extensive questioning from the panel to Ms Baldwin teased out in more detail the issues raised above. While her dwelling at 98 Arthur Street is double glazed, noise is still a concern for Ms Baldwin from what she considers to be a reasonably large scale café activity running 7 days a week from 7am to 10pm. The visitor accommodation activity is not a specific concern of Ms Baldwin. The general level of café activity, especially with footpath seating, is the main point of contention. The Panel questioned Ms Baldwin as to whether or not a reduced size of café would help but Ms Baldwin was not prepared to suggest a lower limit with respect to the number of people dining at any one time. While the re-use of a heritage building was laudable Ms Baldwin did not see this as a justification for commercial activity, which in her view, would substantially reduce the enjoyment of her residential property.

Proposed Condition 14 limiting the use of amplified music was acceptable to Ms Baldwin, and she confirmed she was comfortable with the fencing proposed between her property and the applicant's site.

Council Staff Right of Reply

Ms O'Dea advised that the application stated no trucks would be used for deliveries to the café and that proposed Condition 6 had been formulated on this basis.

Ms Blair raised the question with the panel as to whether or not a 6.30am start for staff, as conditioned, would be early enough to allow a café opening at 7am.

Transport and Heritage staff had no further comments to make.

Applicant's Right of Reply

The applicant elected to present their Right of Reply in writing and the Chair also requested that the Applicant and Ms O'Dea work together to produce an amended set of conditions. The Panel notes that the set of conditions provided in the Applicant's reply were agreed between Council staff and the applicant.

STATUTORY AND OTHER PROVISIONS

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Panel considered. Regard was given to the relevant provisions in the Partially Operative 2GP.

Statutory provisions considered included sections 104, 104B, and 104D of the Resource Management Act 1991.

We note for the record that whilst not in contention the activity status of the application is non-complying. We may not consider the merits of a non-complying activity under s104 or contemplate granting consent under s104B RMA unless at least one of the two gateway tests in s104D are met. These are that the adverse effects of the activity on the environment will be no more than minor (s104D(1)(a)), or that the proposal is not contrary to the objectives and policies of the Plan or Proposed Plan (s104D(1)(b)).

MAIN FINDINGS ON PRINCIPAL ISSUES OF CONTENTION

Adverse Effects

We carefully considered the views presented at the hearing by Ms Baldwin, in particular regarding potential impact on the enjoyment of her property in terms of amenity, noise and carparking. We noted that Ms Baldwin's concerns were limited to the café, as opposed to the visitor accommodation component of the application. There was no disagreement regarding the general re-use of the building and that it contributes to the heritage character of the immediate vicinity.

Whilst Ms Baldwin's lived experience was useful for us to understand the values of the site and nearby environment, we accept the evidence from Council staff and the applicant's planner that:

- The district plan noise rules will be met, and that cafes do not typically generate noise complaints in residential areas;
- The re-use of the building, which provides a contribution to the neighbourhood in terms of character values, weighs in favour of granting the application; our site visit proved particularly useful in this regard in that we noted the corner site location and other nearby well-maintained character buildings which together contribute to a high standard of heritage character and amenity;
- There is no evidence of a lack of on street carparking in the area, and that a proportion of customers are expected to walk to the café;
- The proposed conditions of consent will limit the scale of the café, and therefore the impacts in terms of noise, loading and carparking demands will be well managed.

We also noted the submissions received in support, and that other neighbours were notified of the application but did not submit.

Overall, we conclude that the proposal will provide a positive contribution to the amenity of the neighbourhood, both in terms of the re-use of the character building, and the provision of a space for community to come together and connect. We find that any adverse effects will be minor at most.

Objectives and Policies

We are mindful that the Centres Hierarchy is a key concept embedded in the 2GP, intended to identify and protect a network of commercial centres, ranging from neighbourhood centres through to the central business district, which functions as the primary focus for economic activity and employment growth (Strategic Directions section of the 2GP, particularly Objective 2.3.2 and its supporting policies). We accept, and adopt the careful analysis of this issue set out in the s42A report (paragraphs 43 – 46). In particular we conclude that:

- The proposal is a bespoke mixed-use development within an existing purpose-built commercial/residential building that has a long-standing history of commercial use;
- The café component is small in scale, locally focused, and closely connected to the surrounding community and its day-to-day needs;
- The proposed café will not give rise to the adverse effects anticipated by Objective 2.3.2 or Policy 2.3.2.2;
- The café is not of a scale or nature that would materially affect the functioning or vitality of the CBD or other commercial centres.

In terms of the residential zone objectives and policies, we accept the s42A conclusions set out in the table at paragraph 115 of the report. In particular, for the reasons set out above, we consider that the proposal is not contrary to the outcomes sought in Policy 15.2.1.5 which seeks to avoid commercial activities unless certain outcomes are achieved.

Overall we conclude that the proposal is largely consistent with the relevant objectives and policies of the 2GP, and is not contrary to any.

National Policy Statements and National Environmental Standards

We accept the assessment in the s42A Report that the site is not a HAIL site and the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health is not triggered by this application.

No other National Policy Statements or National Environmental Standards are directly relevant to the application.

Other matters (Section 104(1)(c))

The Panel carefully considered whether, should the application be granted, a precedent would be set for future similar applications, and whether this consent would present a risk to plan integrity.

Given our findings regarding the consistency with relevant objectives and policies of the 2GP, we do not consider this application presents a plan integrity risk.

In terms of the potential to set a precedent that a series of similar applications be sought around the city, we note that the proposal is relatively unique and small scale, involves the adaptive re-use of a purpose-built mixed-use character building, and would return the site closer to its original, long-standing function as a corner store. We accept these factors are specific to the site and proposal, and would not be readily replicable across the residential zone. We therefore conclude that this proposal does not set an undesirable precedent.

Gateway Test

As set out in the s42A Report, 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 proposed plan.

As discussed above in the assessment of effects, overall, we have found that the actual and potential effects associated with the proposal will be no more than minor; and therefore the first limb of Section 104D is met. In order for a proposal to pass the second test of Section 104D, it needs to be not contrary to relevant objectives and policies of the plan. In this instance, we have found the proposal to be in accord with the 2GP policy framework. The proposal therefore also meets the second limb of Section 104D.

In summary, we find that the proposal meets both limbs of Section 104D.

Part 2 Matters

We accept and adopt Ms O'Dea's assessment and find there is no invalidity, incomplete coverage or uncertainty within the 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

DECISION

The final consideration of the application, which took into account all information presented before, at following the hearing, was held during the public-excluded portion of the hearing. The Panel reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991.

That, pursuant to sections 104, 104B and 104D of the Resource Management Act 1991, and the provisions of the Partially Operative Dunedin City District Plan the Dunedin City Council grants consent to a non-complying activity being the establishment of a café and a discretionary activity being the establishment of visitor accommodation at 33 Russell Street, Dunedin being Part Section 17 Block X Town of Dunedin contained within OT292/146 Ltd, subject to conditions set out in Appendix A.

Reasons for this Decision

Our reasons are detailed in the body of this Decision.

Right of Appeal

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

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

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

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Louise Taylor', with a stylized, flowing script.

Louise Taylor
Independent Commissioner
Chair of the Hearings Panel

Appendix A – Conditions of Consent



Consent Type: Land Use Consent

Consent Number: LUC-2025-146

Purpose: Consent to a non-complying activity being the establishment of a café and a discretionary activity being the establishment of visitor accommodation.

Location of Activity: 33 Russell Street, Dunedin.

Legal Description: Part Section 17 Block X Town of Dunedin

Lapse Date: 27 March 2031 unless the consent has been given effect to before this date.

Conditions:

Water and Waste conditions

1. *The café premises and residential unit must have separate water connections. There is an existing water connection to the property which can be retained, if suitable.*
2. *An RPZ boundary backflow prevention device and meter must be installed on any non-domestic water connection servicing the site. A completed "Notification Of A New Boundary Backflow Prevention Device" form must then be supplied to DCC 3 Waters via email to rcmonitoring@dcc.govt.nz.*

Café

3. *Hours of operation are limited to between 7am and 10pm seven days a week. Staff may arrive and leave the site no more than 30 minutes either side of these times.*
4. *There must be no deliveries between 10pm and 7am the following day.*
5. *Deliveries must be undertaken from Russell St.*
6. *All deliveries must be carried out using vehicles no larger than a 99th Percentile Car.*
7. *No music may be played outdoors.*

8. *Live music is not permitted.*
9. *All external lighting must be directed away from any adjoining residential properties.*

Visitor accommodation

10. *The open space to the north-west of the building must be screened from 98 Arthur St prior to visitor accommodation commencing. The screening must be either:*

- *The existing brick wall on the boundary, supplemented by a minimum 1.8m high fence with overlapping timber palings where there is currently a lower, corrugated fence; or,*
- *If the brick wall is ever removed, it must be replaced with a minimum 1.8m high fence with overlapping timber palings.*

For the avoidance of doubt condition 10 only requires screening to be installed between 98 Arthur St and the open yard on the subject site, and does not need to extend along the full length of the southern boundary of the subject site.

11. *The consent holder must supply the following information in writing to the owners and occupants of 98 Arthur St and 41 Russell St.*

- a) *A description of the accommodation being provided at site.*
- b) *Phone numbers for the site, and up-to-date details of a property manager who will be responsible for managing any complaints regarding the conduct of guests. The information must include the property manager's name, email address, and a suitable phone number/s for business hours and after-hours contact.*

12. *When any details in condition 11 change, the updated details must be provided to the addresses listed in condition 11.*

13. *Guests must not use outdoor areas between the hours of 10pm and 7am for socialising.*

14. *Amplified music must not:*

- a) *Be played outdoors between the hours of 10pm and 7am; or*
- b) *Be played at any time, indoors or outdoors, at a volume likely to disturb occupants of neighbouring sites.*

15. *Guests must be made aware of the requirements of conditions 13 and 14.*

Timber joinery

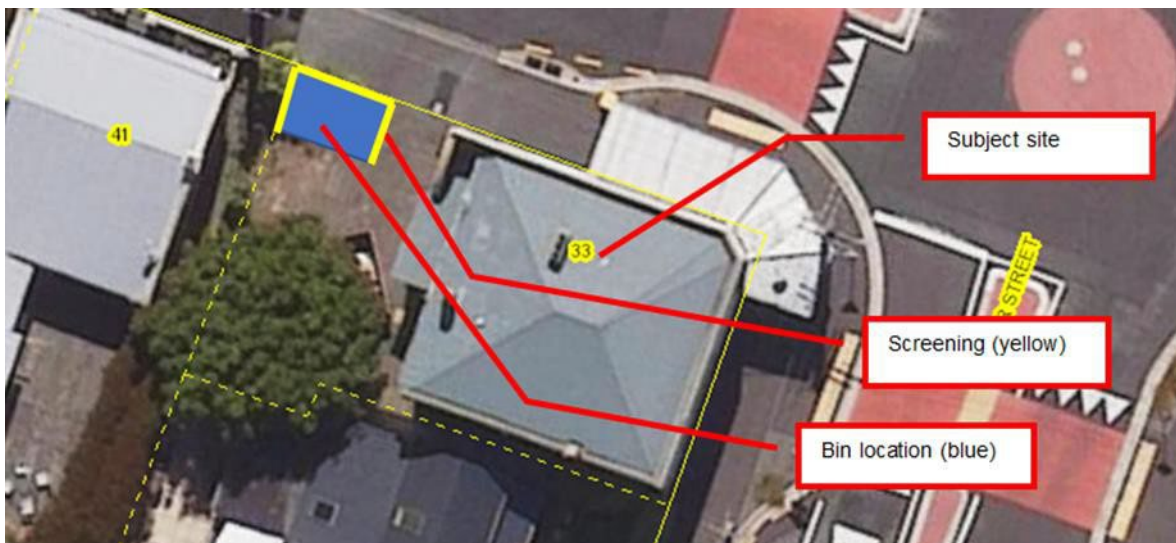
16. *Window and door joinery shall be timber unless an alternative material is approved by the Dunedin City Council's heritage advisor.*

Noise review

17. Pursuant to Section 128 of the Resource Management Act 1991, the noise requirements of this activity may be reviewed one year after the commencement of the activity, and annually thereafter, to ensure that any adverse effects on surrounding residential receivers are sufficiently managed.

Rubbish & Recycling Bins – location and screening

18. Rubbish and recycling bins, if stored outside, are to be located as shown below, with additional screening to be installed to ensure the bins are not visible from the public domain. Such screening, if new, must be approved by Council prior to being installed. Details must be sent to rcmonitoring@dcc.govt.nz and certified by the Council's heritage advisor.



ADVICE NOTES

Noise and Light Spill

1. This consent does not authorise any breaches of the 2GP light spill or noise requirements (Rules 9.3.5 & 9.3.6). Should any aspect of this activity breach these rules then further resource consent is required.

Alcohol Licensing

2. The application has spoken of an OFF licence for the sale of wine. This type of proposal is unlikely to meet the legal requirements for the granting of an OFF licence. The applicant is encouraged to consult with a member of the Alcohol Licensing team for further information.

Signage

3. All signage must comply with the 2GP signage requirements at all times (Rule 6.7.2 and Rule 6.7.3).

Water Services

4. Detail of the water supply application process can be found at: <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
5. Non-domestic water connections require an RPZ boundary backflow prevention device and a meter. Installation of a boundary backflow prevention device requires a building consent, or an exemption from a building consent ([Boundary-backflow-Building-Consent-exemption-form-editable.pdf \(dunedin.govt.nz\)](#)) before the device is installed. Once the device is installed, 3 Waters must be advised so the installation can be approved. A "Notification Of A New Boundary Backflow Prevention Device" must be supplied to 3 Waters for any new RPZ. Further information is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
6. All aspects relating to the availability of water for firefighting 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 Fire and Emergency New Zealand.

Trade Waste

7. Trade waste requirements and an application form are available at: <http://www.dunedin.govt.nz/services/wastewater/tradewaste>

Heritage New Zealand Pouhere Taonga Act 2014

8. The subject site is associated with pre-1900 human occupation. The development may require an Archaeological Authority under the *Heritage New Zealand Pouhere Taonga Act 2014*. Contact Heritage New Zealand Pouhere.

Issued at Dunedin on 27 March 2026.



Louise Taylor
Independent Commissioner
Chair of the Hearings Panel