

22 September 2017

Panwar Enterprises Limited
c/- Anderson and Co
PO Box 3933
Moray Place
Dunedin 9058

Attention: Conrad Anderson

RESOURCE CONSENT APPLICATION: LUC-2017-218 & POL-2017-46
735 GREAT KING STREET
DUNEDIN

INTRODUCTION

- [1] Your application to establish and operate an Indian restaurant at 735 Great King Street, Dunedin was processed on a limited notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991 (the Act). No submissions were received in respect of the application and no hearing was considered necessary. Therefore, pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager, under delegated authority, on 22 September 2017.
- [2] I advise that the Council has **granted** consent to the application. The decision is outlined below, and the decision certificate is attached to this letter.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to establish and operate a commercial activity and licenced premises (on-licence), being an Indian restaurant, with associated signage, at 735 Great King Street, North Dunedin. The proposed restaurant will have a gross floor area of approximately 155 square metres, with tables and seating for approximately 40 customers. It is anticipated that there will usually be 2 staff members working on the site, but this will increase to up to 6 during peak times (Friday and Saturday evenings). The proposed opening hours are 11.30am to 11pm seven days per week, although the restaurant may close early on weeknights and/or for periods during the afternoon between lunch time and dinner time. There is no on-site car parking proposed.
- [4] A copy of the application, including plans of the proposed restaurant, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [5] The subject site is a narrow parcel of land located on the northbound section of State Highway 1 near the north end of Dunedin. The site is flat and contains an existing building, which has been used for a range of activities in the past including most recently a video/DVD hire store, and prior to that a vehicle repair business. The site is currently vacant.

The subject site is legally described as Part Section 29 Block XXXIII Town of Dunedin, and is held in Computer Freehold Register OT17D/707. The site area is 512 square metres more or less.

ACTIVITY STATUS

- [6] The subject site is zoned **Residential 3** in the Dunedin City District Plan. Great King Street in this location is a National Road and forms part of State Highway 1. The site is listed on Council's hazard register as being subject to four non-site-specific hazards: 10106 (Land stability – land movement – alluvial fans – active floodwater), 10111 (Seismic – possible earthquake amplification), 11407 (Seismic – liquefaction), and 11581 (Flood – Lower Leith flood plain). There are no designations or overlays that apply to the site.

Operative District Plan

- [7] The proposal falls within the definition of both Commercial Activity and Licensed Premises. A Commercial Activity under the District Plan is defined as: "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". A Licensed Premises under the District Plan is defined as: "any land or buildings licensed under the Sale of Liquor Act 1989". The proposal also includes signage.
- [8] Resource consent is required as the proposal does not meet the following rules in the District Plan:
- Rule 8.9.1, which specifies the permitted activities in the Residential 3 zone, and does not include either commercial activities or licensed premises.
 - Rules 19.5.1 and 19.5.5, which specify types of signs permitted throughout the city and within the Residential 3 zone.
- [9] Overall the application is considered to be a **non-complying activity** pursuant to Rules 8.9.6 and 19.5.12 of the District Plan.
- [10] As a non-complying activity, the permitted activity conditions and performance standards of the district plan do not directly apply to the activity. However, they do offer guidance as to the effects and suitability of the proposed activity. The proposal does not comply with district plan performance standards relating to bulk and location, amenity open space, loading and access, car parking and signs.

However, in this instance few of these standards provide any useful guidance to the proposal, which involves the redevelopment of an existing commercial premises in close proximity to similar commercial activities.

Proposed District Plan

- [11] The subject site is zoned **Neighbourhood Convenience Centre** in the proposed second generation plan. The site is noted as being subject to Hazard 3 ORC Flood – urban stream – Leith (low risk) and a broad Archaeological Alert layer. In terms of the proposed rule provisions for the zone, restaurants are a permitted activity, and ancillary licensed premises are a discretionary (unrestricted) activity.
- [12] The Proposed 2GP was notified on 26 September 2015, and some 2GP rules had immediate legal effect from this date. In this instance, the application was lodged on 15 May 2017 and none of the relevant rule provisions were in effect at that time.
- [13] Overall, the application is assessed as a **non-complying** activity, in accordance with the operative district plan.

WRITTEN APPROVALS, NOTIFICATION AND SUBMISSIONS

Written affected party approvals were received from parties in the following table:

Person	Owner	Occupier	Address	Obtained
NZ Transport Agency	✓	✓	State Highway 1	26/6/17
B & N Sievwright	✓		15-19 Howe Street	6/6/17
R Oram	✓		25 Howe Street	21/6/17
Usher Group Holdings		✓	867 Cumberland Street	4/7/17
B McCarthy	✓	✓	867 Cumberland Street	1/6/17
P Liu *		✓	23 Howe Street	2/6/17

* received at a later date, post-lodgement.

- [14] In accordance with section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person.
- [15] After initial consideration of the application, it is considered that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.
- [16] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the parties who had given their written approval, and the owners and occupiers of the properties at 711 Great King Street and 23 Howe Street. The written affected party approval of these parties was not obtained and the application was, therefore, notified on a limited basis on 26 July 2017. The affected party approval of the occupier of 23 Howe Street was subsequently provided.
- [17] There were four parties served notice of the application. Copies of the application were sent to the following parties with submissions closing on 25 August 2017:
- McDonalds Restaurants (NZ) Limited – owner, 711 Great King Street, Dunedin
 - The Occupier – 711 Great King Street
 - North Dunedin Presbyterian Church Deacons Court – owner, 23 Howe Street
 - The Occupier – 23 Howe Street

No submissions were received on the application.

Requirement for hearing

- [18] As it is recommended in the assessment below that resource consent be granted to the activity, no submission was received in respect of the application and the applicant does not wish to be heard, it is considered that there is no need for a hearing of the application (section 100 of the Act). Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary and that the decision can be made under delegated authority.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [19] 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.*

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

[21] Under Sections 95D(b) and 104(2) of the Resource Management Act 1991, the Council may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful. The activities permitted on the subject site are:

- Residential activity at a density of not less than 45 square metres of site area per habitable room.
- Commercial Residential Activity at a density of not less than 250 square metres of site area per unit
- Recreational activity provided that associated structures do not exceed 25 square metres in floor area
- Accessory buildings for permitted activities excluding structures for recreational activities in excess of 25 square metres
- Signs associated with permitted activities in some cases up to 2 square metres in area, provided they only the name, character or purpose of the permitted commercial residential activity, and are not illuminated

In this instance, it is not considered appropriate or necessary to apply the permitted baseline other than in considering the nature of signage that may be anticipated in the area. This is because the permitted land uses could not realistically be established without the demolition and clearance of the existing building, and would be constrained by the limited size and frontage of the site.

[22] The receiving environment contains a range of land uses, including in the same block as the subject site:

- Two liquor stores, a brewery, and a bar/restaurant
- Several fast food restaurants
- Residential activity – mostly if not all rental properties mainly for students
- Commercial residential activity (motel)

[23] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential), 19.6 (Signs) and 20.6 (Transportation) of the Dunedin City District Plan are considered relevant to the proposed activity. Accordingly, assessment is made of the following effects of the proposal:

- Bulk, Location, Design, Appearance and Amenity Values;
- Transportation;
- Access to Infrastructure;
- Hazards;
- Cumulative Effects.

Operative District Plan

Bulk, Location, Design and Appearance and Amenity and Character Values (Assessment Matters 8.13.3 and 8.13.5)

[24] The application documents were forwarded to Council's Urban Design Department for assessment. Urban Designer Peter Christos has commented as follows:

With regard to the above application and the likely effects on streetscape and amenity values. 735 Great King Street is located one site back from the corner of Great King and Howe Streets. There is a residential property directly to the north of the site and McDonalds Restaurant adjoins the southern boundary. Commercial activity is continuous along Great King Street between Howe and Ellis Streets and in fact, extends a few sites south of Ellis Street. The site is currently occupied by a United Video outlet and presumably generates at least a moderate amount of visits during evening hours. The applicant has stated that there will be no vehicle movements on the site.

The building has no residential characteristics as it is a small purposed built single storied commercial building. New signs are proposed to occupy the same space as existing signage with the exception of window signs which will not be replaced. There would be an overall reduction in signage.

The Second Generation plan proposes to re-zone the site as Neighbourhood Convenience Centre where restaurants would be a permitted activity. This is in line with the current level of commercial activity and built form within the area.

In my view, this proposal would have less than minor negative effects on streetscape and amenity values.

Relying on the above urban design assessment, it is considered that the bulk and location, design and appearance and amenity and character values effects of the proposal will be no more than minor.

As the site is to be a licensed restaurant, it is both a Commercial Activity and a Licensed Premises, but there are unlikely to be any noticeable difference in terms of amenity effects on the surrounding environment. The primary function of the restaurant will be the sale of food. The on-licence for diners only is unlikely to result in any change in amenity values. It is noted that alcohol harm issues are a matter for the liquor licence process. Council's Alcohol Licensing Inspector, Tony Mole, has provided advice notes that relate to this process, and these are included below.

Transportation (Assessment Matter 8.13.7)

[25] Great King Street in this location a one-way street and consists of the two northbound lanes of State Highway 1. The subject site is located close to the traffic light-controlled intersection of Great King and Howe Streets. As Great King Street forms part of State Highway 1, the road controlling authority is the NZ Transport Agency. In order to minimise adverse effects on the highway, as a result of consultation with the Transport Agency the applicant modified their original application to promote the following conditions of consent:

- The location of the signage is to be restricted to signage on the building and signage on one free-standing sign within the front yard
- The free-standing sign is to have a maximum of six words and/or symbols, a maximum of 40 characters, and a minimum lettering height of 120mm

The NZ Transport Agency provided their affected party approval to the proposal.

[26] The application was forwarded to Council's Transportation Department for assessment. Council's Transport Planner/Engineer, Grant Fisher, has commented as follows:

Parking: On-site parking will not be provided for the proposed restaurant. While the applicant states that they are able to use two car parks toward

the rear of the site via an access agreement with a neighbouring property owner, the application is not for these to be included as part of any consent. Presumably these parking spaces would be used for staff.

Parking historically has been provided in the front yard of the site, though this will cease as part of the proposed restaurant activity. Transport considers this to be acceptable, as this will lead to a positive safety improvement for the frontage road given that these parking spaces did not offer on-site manoeuvring.

The applicant states that they believe customers will predominantly be local residents within close walking distance of the site. Pedestrian access to the site is generally good with key intersections near the site being signalised with pedestrian crosswalks, and it is understood that the Cumberland Street North/Howe Street intersection will also be signalised as part of the planned NZTA cycleway upgrades to the State Highway network. Transport also notes that the site is located near public bus routes and the central city cycling network.

Transport is generally supportive of the reuse of existing buildings in commercial areas as such as the subject site, acknowledging that many of these sites have limited ability to provide on-site parking. Furthermore, it is noted that the site is proposed to be zoned Neighbourhood and Convenience Centre in the Second Generation District Plan (2GP), which would result in the proposed restaurant being a permitted activity with no on-site parking requirements. It is understood that this zone and parking provision has not been opposed during the 2GP submission process.

Changes to kerbside parking restrictions in this area may be warranted in the future to provide a better mix of parking resources for businesses, commercial activities, and residents in the area, and this will be an aspect that Transport may investigate in the future once we have a city parking management plan in place. Overall, Transport considers parking shortfall generated as a result of the proposed activities to be acceptable, especially in the context of the commercial activity that has previously operated from the site, the overall existing commercial nature of the area, and proposed 2GP zoning.

It is advised, however, that while Transport considers the proposed activity to be acceptable, we also consider that the applicant has lodged the application fully aware of existing parking resources and restrictions near the site, and that they are accepting of them. The applicant must also accept that Transport retains the right to review kerbside parking restrictions in this area in the future.

Loading: The applicant has provided details regarding loading arrangements, and Transport is generally accepting of these. We would also advise that the applicant/operator of the proposed restaurant should undertake servicing/deliveries at these times in order to minimise effects on the parking network.

Conclusion: Transport considers the proposed development to be acceptable. The following advice notes are recommended:

Advice notes:

- (i) Transport considers that the applicant has lodged the application fully aware of proposed parking restrictions near the site, and that they are accepting of them. The applicant must also accept that Transport retains the right to review kerbside parking restrictions in this area in the future.*

- (ii) *Servicing/deliveries for the proposed restaurant should be undertaken outside peak traffic/parking demand times.*

Relying on the above assessment, the effects on the transportation network are considered to be no more than minor.

- [27] As the site is to be a licensed restaurant, it is both a Commercial Activity and a Licensed Premises, but there are unlikely to be any noticeable difference in terms of transportation effects on the surrounding environment. The primary function of the restaurant will be the sale of food. The on-licence for diners only is unlikely to result in any change in traffic generation.

Provision for Stormwater, Water and Sewerage (Assessment Matter 8.13.10)

- [28] The application documents were forwarded to Council's Water and Waste Department for assessment. The Consents and Compliance Officer, Chelsea McGaw, has commented as follows:

WWS has considered the difference in use between the proposed restaurant and the allowable residential activities. As a restaurant has relatively low wastewater discharges compared with other commercial activities and there is availability in the water network. The site is zoned 'Neighbourhood and Convenience Centre' in the 2nd Generation District Plan to reflect its previous commercial use and the neighbouring activities. Because of these reasons, this application is not opposed by WWS subject to the conditions provided.

Existing Services

A review of the Council's GIS records shows a 100mm diameter water pipe, 225mm & 150mm diameter wastewater pipe and a 600mm diameter stormwater pipe in Great King Street North.

Water Services

There is a current 20mm metered water supply to the building (meter #0706M000159) which can be retained to service the proposed Indian restaurant. DCC has no record of a boundary backflow prevention device at this property. Commercial activities require a testable boundary backflow prevention device to be installed. The approval for installing the RPZ needs to be addressed as part of the building consent.

Firefighting Requirements

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. There is a Fire Hydrant (WFH02053) 40 metres from the development entrance. Based on SNZ PAS 4509:2008 a W3 (25l/s) zone requires a Fire Hydrant within 135 m and a second within 270 m. These Fire Hydrants requirements are compliant for the development.

Stormwater Services

The proposal does not involve changing the imperviousness of the current site and therefore there will be no changes to stormwater flows.

Trade Waste

The Dunedin City Council Trade Waste Bylaw 2008 came into effect on 1 July 2008. Trade Waste requirements for any new industrial activity within the proposed lots should be discussed with the Senior Education and Compliance Officer (Waste), Water and Waste Services.

Private Drainage

Any private drainage and sanitary fitting matters will be dealt with at time of Building Consent.

Consent Conditions

1. *A Reduced Pressure Zone (RPZ) boundary backflow prevention device must be installed on any existing or new water connection servicing the proposed development. The RPZ device must be installed immediately downstream of the water meter, just inside, and as close as practicable to, the customer's property boundary.*
2. *Following installation, the consent holder must advise WWS by completing the New Boundary Backflow Prevention Device form so the device can be inspected and tested by the Education and Compliance Officer (Water), Water and Waste Services.*

Advice Notes

Code of Subdivision & Development

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

Fire-fighting Requirements

- *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.*

Backflow Requirements

- *Installation of the boundary backflow prevention device must be approved as part of the building consent for the proposed development. The applicant is advised to contact the Water Bylaw Compliance Officer if further guidance is required prior to installation of the device. Further information on boundary backflow is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.*
- *The RPZ boundary backflow prevention device must be installed by a plumber, to the approval of the Education and Compliance Officer (Water), Water and Waste Services.*

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.*

Relying on this assessment, it is considered that subject to compliance with the suggested consent conditions, the water, stormwater and sewerage effects of the proposal will be no more than minor.

Hazards and Safety (Assessment Matters 8.13.12 and 8.13.17)

- [29] As discussed above, the site is subject to several non-site-specific hazards in Council's hazards register. However, these relate mainly to building

development on the site. The proposal includes the re-use of an existing commercial premises rather than any construction.

Signs (Assessment Matters 19.6.1, 19.6.2, 19.6.4)

- [30] In terms of amenity and cumulative effects, the overall signage area is proposed to be less than under the subject site's previous use as a video store. In terms of traffic safety, the applicant has proposed restrictions on signs to ensure they are clear and easy to read, in accordance with the NZ Transport Agency's sign guidelines. Given that the NZ Transport Agency has provided its affected party approval, it is considered that the effects on traffic safety will be no more than minor.

Cumulative Effects (Assessment Matter 8.13.13)

- [31] 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".*
- [32] 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'.
- [33] The surrounding area contains a variety of types and scales of land uses, including several other licensed premises and restaurants. The effects from this proposal are not expected to add to the existing effects such that the cumulative effects are more than minor. Future applications for activity in the area, beyond that permitted 'as-of-right' by the District Plan, will be assessed as and when they arise and the potential for cumulative effects considered again at that time.

Proposed District Plan

- [34] In this instance, there are no applicable assessment rules.

Effects Assessment Conclusion

- [35] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the Dunedin City District Plan (section 104(1)(b)(vi))

- [36] Section 104(1)(b)(vi) of the Act requires the Council to have regard to any relevant provisions of the Dunedin City District Plan and the proposed 2GP.
- [37] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	As noted by Council's Urban Designer, the building is a purpose-built commercial building with as no residential characteristics as it is a small purposed
Policy 4.3.1 Maintain and enhance amenity values.	

	built single storied commercial building. Overall there is a reduction in signage. As such, it is considered that the proposal will maintain amenity values, and will therefore be consistent with this objective and policy.
Objective 4.2.3 Sustainably manage infrastructure	Infrastructure is defined in the District Plan as "built structures necessary for operating and supplying essential utilities and services to the community including, but not limited to, telecommunications, natural or manufactured fuel, electricity, water, drainage, sewerage, road and railway lines, airports". Based on comments from Council's Water and Waste department, and the affected party approval of the NZ Transport Agency, it is considered that the proposal will allow for infrastructure to be sustainably managed. In terms of providing for land uses which are compatible, the effects associated with a restaurant are not expected to be incompatible with other surrounding land uses, which are varied, or the underlying anticipated land use of residential activity. As such, the proposal is considered to be generally consistent with these policies and objective.
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.10 Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	As noted above, the proposal has been assessed as maintaining amenity values. As such, it is considered to be consistent with this objective and policy.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	
Policy 8.3.4 Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	Density of development will not change as a result of the proposal, as the restaurant will occupy an existing single-level building. Council's Water and Waste department has advised that subject to relevant conditions, any effects on service infrastructure will be appropriately managed. As such, the proposal is considered to be consistent with this policy.

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The NZ Transport Agency as road controlling authority for Great King Street (SH1) have provided their affected party approval to the application, and Council's Transportation Department have advised that they consider the proposal to be acceptable. As stated in the application, it is anticipated that the likely customers for the restaurant will be people who live in the campus area, many of whom will walk rather than drive to the subject site. There
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and	

effective operation of the roading network.	is no on-site parking provided and the proposal is not expected to be a high-traffic-generating activity. As such, the proposal is considered to be consistent with these objectives and policies.
Policy 20.3.5 Ensure safe standards for vehicle access.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	

Signs Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 19.2.1 Avoid, remedy or mitigate the adverse effects of signs on amenity values.	The amount of signage on the subject site as part of this proposal will be less than what it was in its previous use as a video store. As noted above, Council's Urban Designer has considered the proposal and advised that any effects on streetscape and amenity values will be less than minor. The applicant has promoted specific conditions relating to the clarity of signs to ensure any effects on the transport network are minimised. As such, the proposal is considered to be consistent with these objectives and policies.
Objective 19.2.2 Ensure that signs do not adversely affect the safe and efficient functioning of the road network.	
Objective 19.2.4 Promote the efficient use of signs by managing the adverse effects of visual clutter.	
Policy 19.3.1 Ensure that signs do not detract from the amenity values of the area in which they are located and the amenity values of areas from where they are visible.	
Policy 19.3.2 Control the design, location, size and number of signs erected at any given location to avoid, remedy or mitigate any adverse effects.	
Policy 19.3.4 Promote simplicity and clarity in the form of the sign and the message the sign conveys.	

Environmental Issues Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 21.2.2 Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.	The proposal is not expected to generate noise or glare at a higher level to the existing environment and the range of land uses that operate in the surrounding area. The health, safety and amenity of people and communities are not considered to be adversely affected. As such, the proposal is considered to be consistent with this objective and policy.
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	

Proposed District Plan

[38] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following objectives and policies of the Proposed District Plan were considered to be relevant to this application:

Strategic Directions Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 2.3.2 Dunedin has a hierarchy of vibrant centres anchored around one Central Business District (CBD), which provides a focus for economic and employment growth, driven	The proposal is to locate a new restaurant within a Neighbourhood Convenience Centre, being an area that contains a mix of uses currently, including several other

by: - a.attraction of businesses to these areas based on the high level of amenity and density of activity in the area; - b.opportunities for social interaction, exchange of ideas and business cooperation; - c.public investment in public amenities and other infrastructure in the CBD; and - d.opportunities for agglomeration benefits from the co-location of activities.	restaurants. In terms of the hierarchy of centres, the proposal includes locating a restaurant within a neighbourhood centre, providing for the needs of local areas and passing motorists. As such, the proposal is considered to be consistent with this objective and policy.
Policy 2.3.2.1 Identify and protect the existing hierarchy of centres in Dunedin, which includes: ... e.neighbourhood centres, which are generally small clusters of shops that provide for a range of day to day needs for local areas, as well as, in destination centres, also to visitors, and in convenience centres, also to passing motorists.	

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 6.2.3 Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	Council's Transportation Department have advised that they consider the removal of the current parking area to be a safety improvement, and that the parking shortfall is acceptable. Conditions are included that have been promoted through consultation with the NZ Transport Agency to address any safety and efficiency effects associated with signage. As such, the proposal is considered to be consistent with this objective and this policy.
Policy 6.2.3.1 Require ancillary signs to be located and designed to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	

Commercial and Mixed Use Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 18.2.1 Dunedin has a well-structured and economically and socially successful range of commercial and mixed use environments based on: ... c. neighbourhood centres, which provide for the day to day needs of local areas, with destinations centres also servicing visitor needs, and convenience centres also servicing the needs of passing motorists.	As noted above, the proposal is to locate a restaurant within a neighbourhood centre, providing for the needs of local areas and passing motorists. Given the existing surrounding area that includes a number of licensed premises and restaurants, the proposal is not expected to give rise to additional adverse effects on any adjacent residential activity. As such, the proposal is considered to be consistent with this objective and these policies.
Policy 18.2.1.4 Provide for food and beverage retail: a. in the CBD and centres	
Policy 18.2.10 Only allow ancillary licensed premises in neighbourhood centres, where adverse effects on the character and amenity of adjacent residential activities and the surrounding neighbourhood, can be avoided or, if avoidance is not possible, adequately mitigated.	

Objective 18.2.2 The potential for conflict between activities within the commercial and mixed use zones, including between residential activity and noisier activities, and between activities within the commercial and mixed use zones and sensitive land uses in adjoining residential and recreation zones is minimised through adequate separation distances and other mitigation measures which ensure: a.the amenity of adjoining residential and recreation zoned sites is maintained; and b.the potential for reverse sensitivity effects from more sensitive land uses (for example residential activities) on other permitted activities in the commercial and mixed use zones is minimised.	The proposed activity is not considered to be markedly different in terms of reverse sensitivity effects than the previous land uses that operated on the site. As noted above, the proposed restaurant is not considered to give rise to additional adverse effects on residential amenity, given the already commercial nature of the immediately surrounding area. As such, the proposal is considered to be consistent with this objective and these policies.
Policy 18.2.2.4 Only allow restaurants - drive through and service stations in zones that provide for residential activity or on sites adjoining a residential zone, where any adverse effects on the amenity of residential activities can be avoided or, if avoidance is not possible, adequately mitigated.	
Policy 18.2.2.9 Only allow ancillary licensed premises in the NECC and NEC where the adverse effects on the amenity of adjacent residential activities and the surrounding neighbourhood can be avoided or, if avoidance is not possible, adequately mitigated.	
Objective 18.2.3 Land use and development maintains or enhances the amenity of the streetscape, including the visual and environmental amenity for pedestrians along identified pedestrian street frontages.	
Policy 18.2.3.7 Limit the size and number of ancillary signs to ensure they are able to convey information about the name, location and nature of the business to passing pedestrians and vehicles while not being oversized or too numerous for that purpose.	

- [39] As the Proposed 2GP is not far through the submission and decision-making process, the objectives and policies of the Dunedin City District Plan have been given more consideration than those of the Proposed 2GP.
- [40] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with those provisions.
- [41] [Note: in the case of a non-complying activity it is important to make an overall determination as to whether the proposal is contrary to the objectives and policies of the plan as this will inform your 104D gateway considerations.]

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

- [42] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement (RPS) for Otago was made operative in October 1998. Given its regional focus, the

regional policy statement does not have a great bearing on the current application. Chapter 5: Land, Chapter 6: Water and Chapter 7: Air are all somewhat relevant in that they seek to promote sustainable management of Otago's land, water and air resources.

- [43] The proposal is to establish a commercial activity in a building that has for some time been utilised for commercial activities. The RPS directs the role of Territorial Authorities such as the Dunedin City Council in relation to the above chapters in a number of ways. In terms of Chapter 5 (Land): the consideration of the mitigation of hazards and hazardous substances. In terms of Chapter 6 (Water): controlling the actual and potential effects of activities in relation to water. And in terms of Chapter 7 (Air): ensuring that contaminated air is disposed of in a way which avoids causing a nuisance or hazard to people and other property and that impacts of air quality in considering resource consents, even though a discharge permit may not be required.

DECISION-MAKING FRAMEWORK

Part 2 Matters

- [44] 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 includes 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.
- [45] Of particular relevance to this application are sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", 6(f) "the protection of historic heritage from inappropriate subdivision, use and development", 7(c) "the maintenance and enhancement of amenity values" and 7(f) "the maintenance and enhancement of the quality of the environment".
- [46] As discussed in the assessment of effects above, the proposed development is not considered to create adverse effects on the environment that are more than minor when considered in the context of the receiving environment and the provisions of the Dunedin City District Plan and the Proposed 2GP.
- [47] I therefore consider that the proposal will avoid, remedy or mitigate adverse effects to a degree that satisfies the provisions of the Dunedin City District Plan and the Proposed 2GP. When considering the proposal overall, and in considering the positive effects that would result for the subject and neighbouring sites, the proposed development would be consistent with the purpose of the Act outlined in section 5 of that legislation.
- [48] Having regard to section 6 of the Act, there are no matters of national importance which can be considered to be affected by the development of this site.
- [49] Having regard to section 7(c) of the Act, the proposal has been assessed as having less than minor effects on amenity values.
- [50] Overall, I consider the proposal is consistent with those matters outlined in Part 2 of the Act.

Section 104D

- [51] 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.

- [52] As discussed above in the assessment of effects, the proposed land use is the re-use of an existing commercial premises for an activity similar to activities on nearby sites. It is considered that the effects associated with the proposal will be no more than minor.
- [53] Overall I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore 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 Council to be able to assess the application under section 104(1)(a) of the Act.
- [54] However, only one of the two tests outlined by section 104D need be met in order for Council to be able to assess the application under section 104(1)(a) of the Act. In order for a proposal to fail the second test of section 104D, it needs to be contrary to the objectives and policies of the Dunedin City District Plan and the Proposed 2GP. It is noted that in this instance, the proposal is assessed as being not inconsistent with the relevant objectives and policies of the Sustainability, Residential and Transportation sections of the Dunedin City District Plan. It was also considered to be consistent with the Strategic Direction, Transportation, and Commercial and Mixed Use sections of the proposed second generation plan. The proposed development is therefore considered to also satisfy the second 'gateway' test outlined by section 104D.
- [55] In summary, the application passes both the threshold tests in section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with section 104(1)(a) of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [56] Section 104(1)(a) states that the Council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be no more than minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [57] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to the Residential Zones, Transportation and Environmental Issues Sections of the Dunedin City District Plan and the Proposed 2GP.
- [58] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago. Any air discharge if required will be subject to Otago Regional Council performance standards.
- [59] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [60] Case law has suggested 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.

- [61] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan or the Proposed 2GP. The previous land uses that have occurred on the site for a long time have been a variety of commercial uses. The building on the site is a purpose-built commercial building. As it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.
- [62] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any. I therefore do not consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.

CONCLUSION

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

CONSENT DECISION

*That, pursuant to sections 34A and 104C and after having regard to Part 2 matters and section 104 (and 104D) of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to establish and operate a commercial activity and licensed premises (Indian restaurant) and associated signage, on the site at 735 Great King Street, Dunedin, being that land legally described as Part Section 29 Block XXXIII Town of Dunedin, held in Certificate of Title OT17D/707, subject to the conditions imposed under section 108 of the Act as shown on the attached certificate.*

REASONS FOR DECISION

- [64] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will be no more than minor.
- [65] The proposal is considered to be not inconsistent with the key relevant objectives and policies of the Dunedin City District Plan and the Proposed 2GP.
- [66] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago.
- [67] As the proposal is considered likely to give rise to adverse effects that will be no more than minor, and will not be contrary with the objectives and policies of the District Plan, the proposal is considered to meet both 'limbs' of the section 104D 'gateway test'. Consideration can therefore be given to the granting of consent to the proposal.
- [68] The proposal is considered to be a true exception because the subject site contains one small purpose-built commercial building that has been used for a variety of commercial purposes for an extended period of time.
- [69] The proposal is considered to be consistent with the Part 2 matters of the Resource Management Act 1991.
- [70] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the Residential 3 zone that the Dunedin City District Plan seeks to protect. Further, the subject site and adjacent area is proposed to be rezoned as Neighbourhood Convenience Centre in the proposed plan, reflecting the mix of land uses in that currently exist and operate. Although the proposed plan is not finalised and therefore the proposed rezoning is not in place at this stage, there have been no submissions in opposition of the proposed rezoning, and the only submission on this particular area involves a request for changing the activity status of

conference facilities. As such, the direction indicated by the notified 2GP and the public notification and submission process is that the proposed rezoning is likely to go ahead.

COMMENCEMENT OF CONSENT

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

RIGHT OF APPEAL

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

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

- [73] Any appeal must be served on the following persons and organisations:
- The Dunedin City Council.
 - The applicants.
 - Every person who made a submission on the application.
- [74] Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.
- [75] Please direct any enquiries you may have regarding this decision to James Coutts whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Prepared by:

Approved by:

James Coutts
Planner

22 September 2017

Alan Worthington
Resource Consents Manager

22 September 2017

Consent Type: Land Use Consent

Consent Number: LUC-2017-218

*That, pursuant to sections 34A and 104C and after having regard to Part 2 matters and section 104 (and 104D) of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to establish and operate a commercial activity and licensed premises (Indian restaurant) and associated signage, on the site at 735 Great King Street, Dunedin, being that land legally described as Part Section 29 Block XXXIII Town of Dunedin, held in Certificate of Title OT17D/707, subject to the conditions imposed under section 108 of the Act as shown below:*

Location of Activity: 735 Great King Street, Dunedin

Legal Description: Part Section 29 Block XXXIII Town of Dunedin (Computer Freehold Register OT17D/707)

Lapse Date: 22 September 2022, unless the consent has been given effect to before this date

Conditions

- 1 The activity shall be carried out generally in accordance with the plans entitled "Shop Retro Fit – 735 Great King Street, Dunedin" prepared by Bryan Menzies and dated 10/4/17, and the information in the application received by Council on 15 May 2017, except where modified by the further information dated 12 June 2017, and except where modified by the following conditions of consent.*
- 2 A Reduced Pressure Zone (RPZ) boundary backflow prevention device must be installed on any existing or new water connection servicing the proposed development. The RPZ device must be installed immediately downstream of the water meter, just inside, and as close as practicable to, the customer's property boundary.*
- 3 Following installation, the consent holder must advise WWS by completing the New Boundary Backflow Prevention Device form so the device can be inspected and tested by the Education and Compliance Officer (Water), Water and Waste Services.*
- 4 The location of signage is to be restricted to on the building and on a free-standing sign in the front yard.*
- 5 The free-standing sign is to have a maximum of six (6) words and/or symbols, with a maximum of forty (40) characters, and a minimum lettering height of 120mm.*
- 6 The consent holder shall ensure noise from activity taking place on the site will not exceed the performance standard set out in Rule 21.5.1 of the District Plan as at 22 September 2017.*
- 7 The activity authorised by this consent shall produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan as at 22 September 2017.*

Advice Notes

- 1 Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the work.
- 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. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 4 It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
- 5 This consent shall lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
- 6 Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
- 7 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.
- 8 Installation of the boundary backflow prevention device must be approved as part of the building consent for the proposed development. The applicant is advised to contact the Water Bylaw Compliance Officer if further guidance is required prior to installation of the device. Further information on boundary backflow is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
- 9 The RPZ boundary backflow prevention device must be installed by a plumber, to the approval of the Education and Compliance Officer (Water), Water and Waste Services.
- 10 Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.
- 11 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.
- 12 Council's Transport Department considers that the applicant has lodged the application fully aware of proposed parking restrictions near the site, and that they are accepting of them. The applicant must also accept that Council's Transport Department retains the right to review kerbside parking restrictions in this area in the future.

- 13 Servicing and deliveries for the proposed restaurant should be undertaken outside peak traffic/parking demand times.
- 14 Please note that the restaurant will require a Certificate of Registration under the Food Act 2014. An application for registration must be submitted to the Council's Environmental Health department. It is recommended that the consent holder contact Environmental Health regarding the requirements for registration, which will include a Food Control Plan.
- 15 The sale of alcohol requires a liquor licence. Applications must be made to Dunedin City Council and can take six to eight weeks to be issued if there are no matters in opposition or objections.
- 16 The licensed hours for a restaurant will be aligned with the 2006 Sale of Liquor Policy in that the licence will allow for sales until 11pm during the week and midnight Fridays and Saturdays.

Issued at Dunedin this 22nd day of September 2017

Alan Worthington
Resource Consent Manager

**CERTIFICATE FOR THE PURPOSES OF SECTION 100(f)
OF THE SALE AND SUPPLY OF ALCOHOL ACT 2012**

Planning Certificate Number:	POL-2017-46
Property Address:	735 Great King Street
Applicant:	Panwar Enterprises Limited
Premises Name:	The Mharajas
Legal Description:	Part Section 29 Block XXXIII, Town of Dunedin, held in Computer Freehold Register OT17D/707
Owner:	Marie Kung
Dunedin City District Plan:	Residential 3 Zone
Proposed Second Generation Dunedin City District Plan	Neighbourhood Convenience Centre (Commercial Mixed Use Zones)

The Dunedin City Council hereby certifies that the premises located at 735 Great King Street, Dunedin, meets the requirements of the Resource Management Act 1991 to operate as a licensed premises (on licence) as defined by the Sale and Supply of Alcohol Act 2012 for the following reasons:

Dunedin City District Plan

The subject site is located in the **Residential 3** zone of the Dunedin City District Plan. Within this zone, licensed premises (defined as "...any land or buildings licensed under the Sale and Supply of Alcohol Act 2012") are not provided for, and are a **non-complying activity** pursuant to 8.9.6(iii).

In this instance however, the proposed activity is authorised by resource consent LUC-2017-218 issued together with this certificate. This consent authorises the establishment of a commercial licensed premises, comprising an Indian restaurant with an on-licence. The licensed premises can operate on the basis of this consent.

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

The subject site is located in the **Neighbourhood Convenience Centre** (commercial) zone of the Proposed 2GP. The Proposed 2GP was notified on 26 September 2015, and some 2GP rules have immediate legal effect. In this instance, there are no relevant 2GP rules to consider, and the Dunedin City District Plan is the operative plan.

Advice Notes

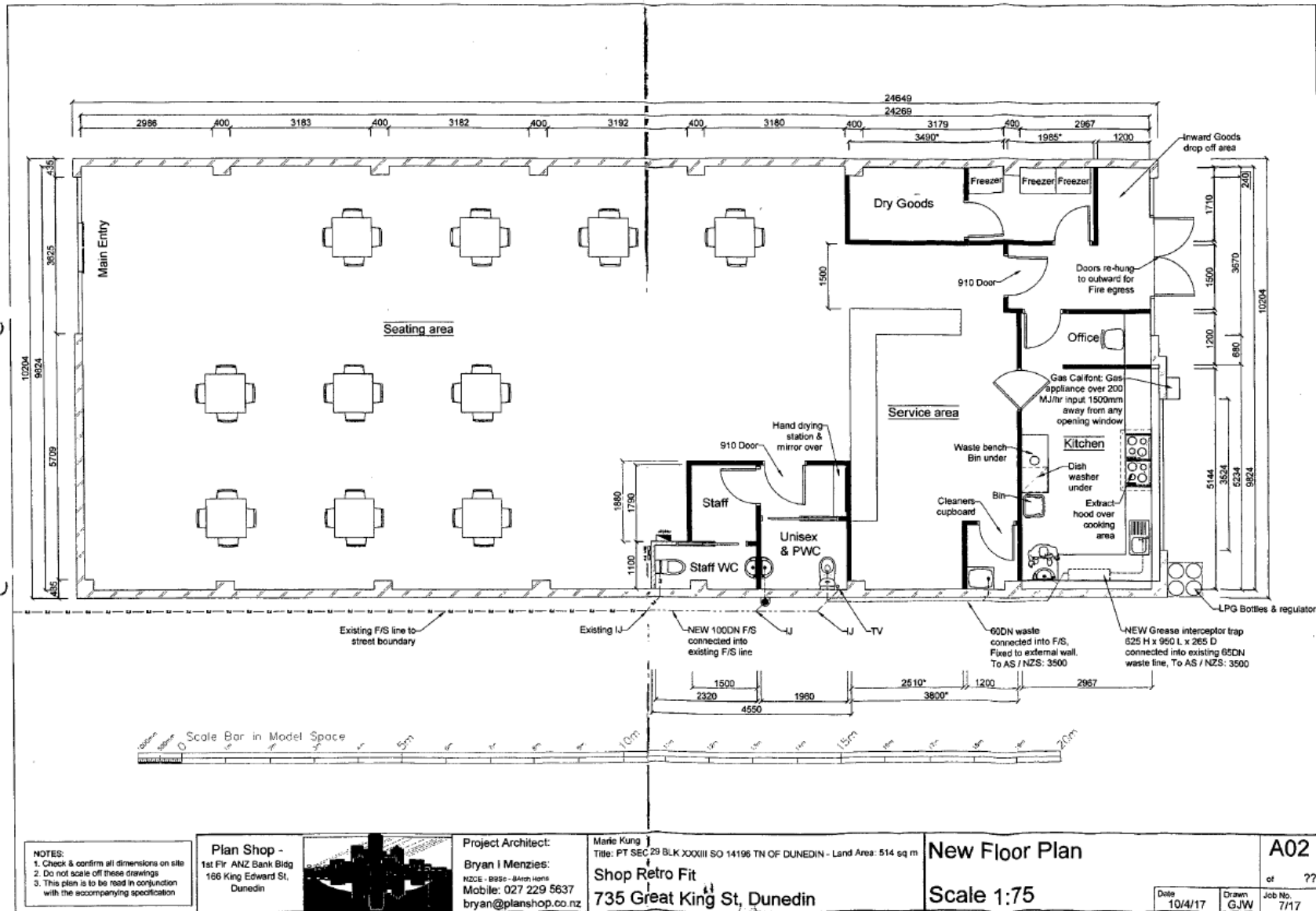
1. *This activity must comply with the performance standards for noise, glare and electrical interference outlined in Rule 21.5 of the Environmental Issues Section of the Dunedin City District Plan.*

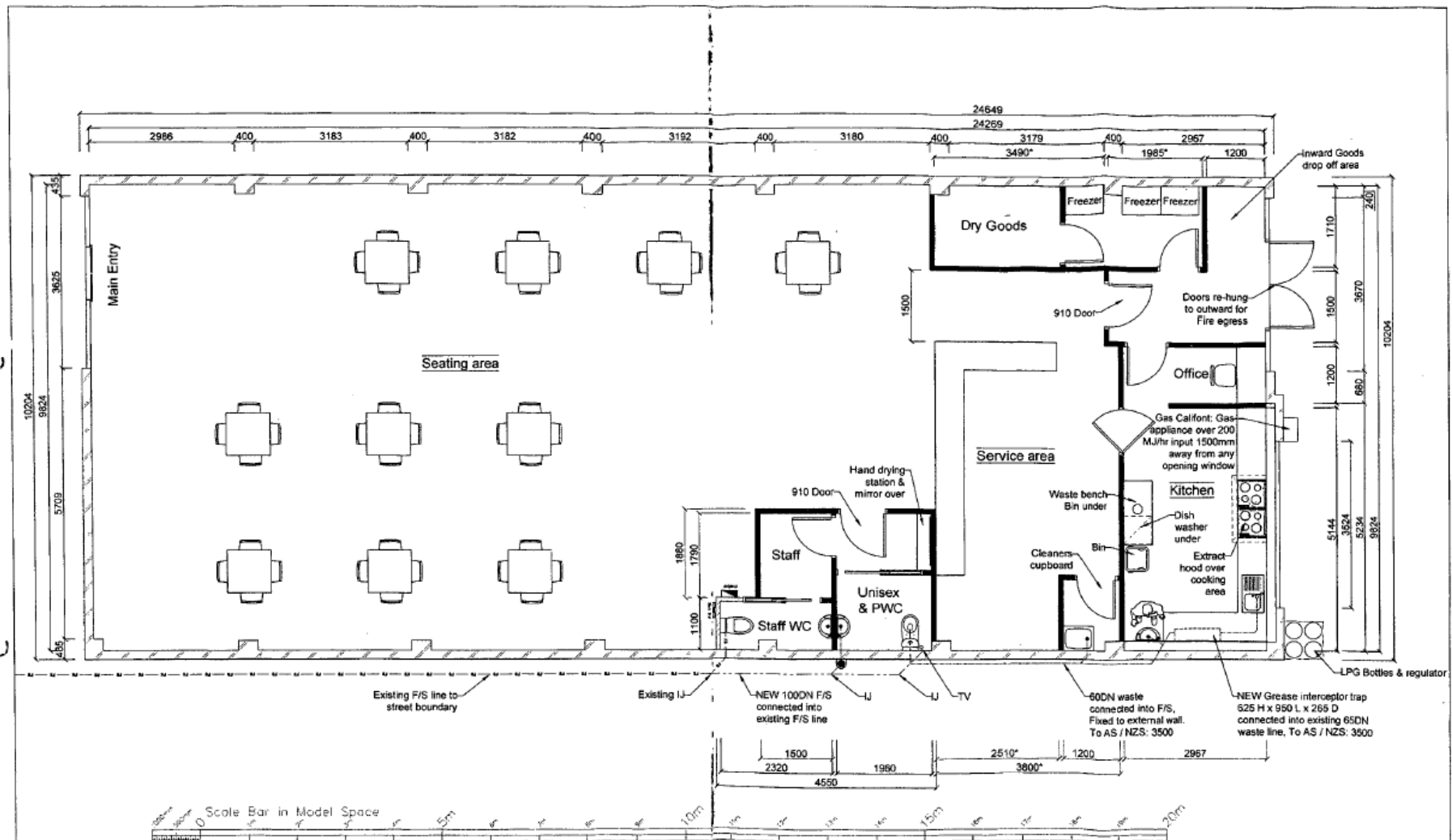
2. *This application has been assessed under the Resource Management Act 1991, and the Dunedin City District Plan. It does not remove the need to comply with other legislation and Dunedin City Council regulations. These include the Dunedin City Council District Licensing Agency Sale of Liquor Policy.*
3. *Any external signage must comply with the conditions of resource consent LUC-2017-218*

James Coutts
Planner

Issue Date: 22nd day of September 2017

Appendix 1: Copy of Approved Plans for LUC-2017-218
(Scanned images, not to scale)





NOTES:
 1. Check & confirm all dimensions on site
 2. Do not scale off these drawings
 3. This plan is to be read in conjunction with the accompanying specification

Plan Shop -
 1st Flr ANZ Bank Bldg
 166 King Edward St,
 Dunedin



Project Architect:
Bryan I Menzies:
 NZCE - 8885c - March 2015
 Mobile: 027 229 5637
 bryan@planshop.co.nz

Marie Kung
 Title: PT SEC 29 BLK XXXII SO 14196 TN OF DUNEDIN - Land Area: 514 sq m
Shop Retro Fit
735 Great King St, Dunedin

New Floor Plan

Scale 1:75

A02

of ??

Date 10/4/17	Drawn GJW	Job No. 7117
-----------------	--------------	-----------------