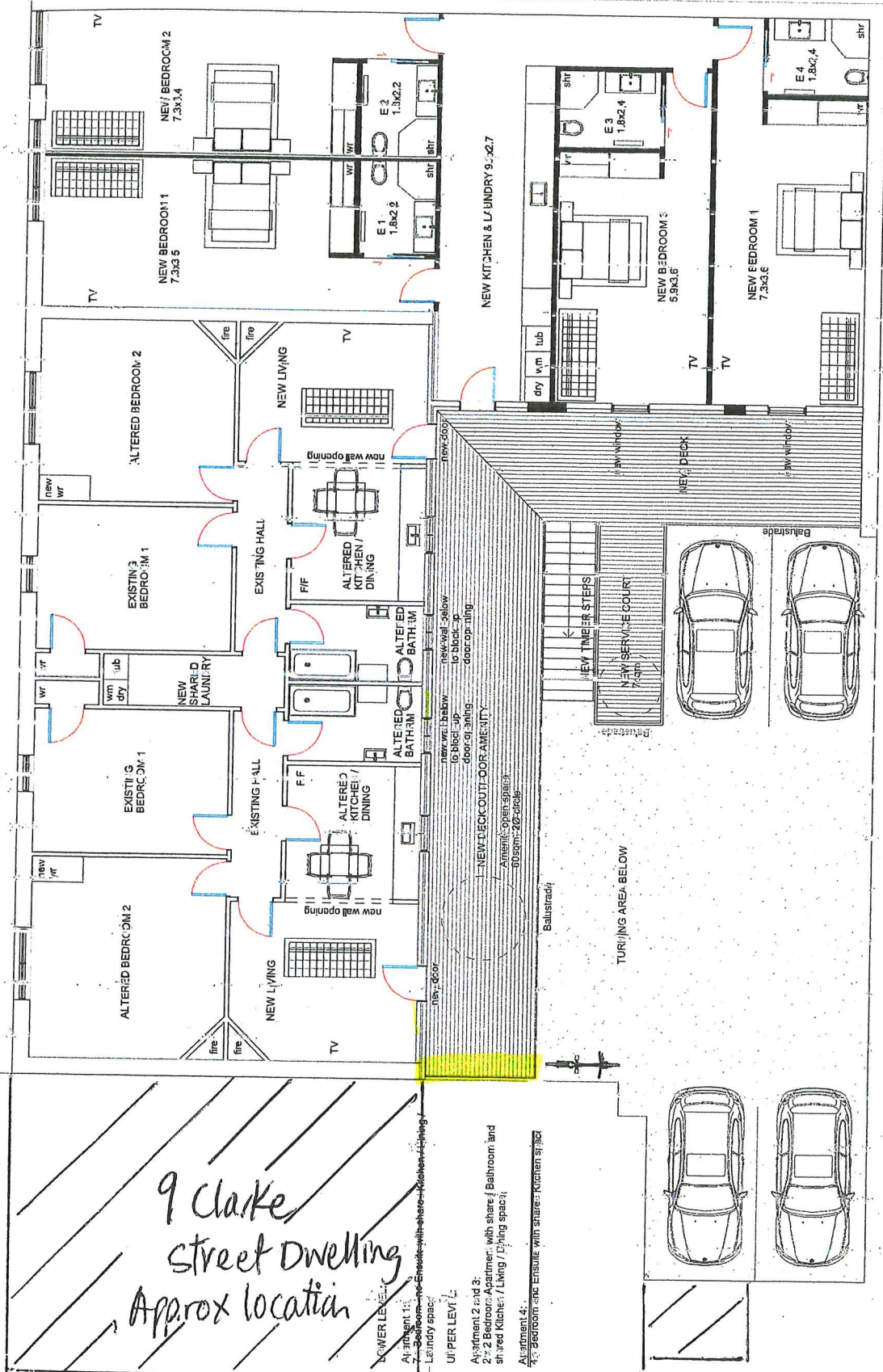


CLARK STREET

Footpath below

LEGAL DESCRIPTION
 L312
 CP 439708
 CTAGO
 Site Area: 515sqm
 Wind Zone: Medium
 Existing Site Coverage: 75%
 Proposed Site Coverage: 75%



PROPOSED UPPER FLOOR PLAN
 1:100



NZIA
 PRACTICE

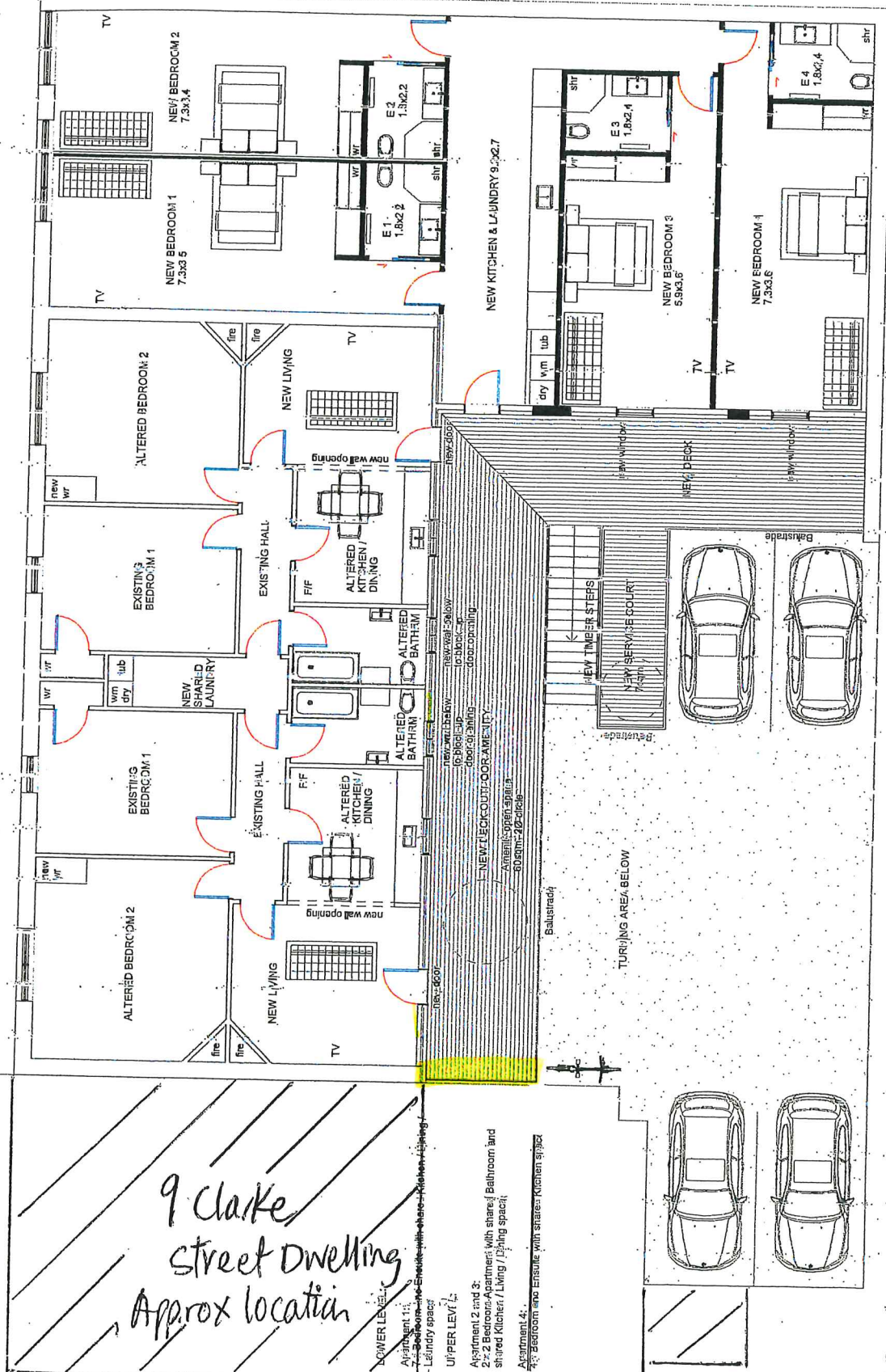
DEVELOPMENT OF 5 & 7 CLARK STREET - DUNEDIN

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LEGAL DESCRIPTION
Lot 2
CP 439708
STAGGS
SHAGGS
WIND ZONE 1
Existing Site Coverage: 75%
Proposed Site Coverage: 75%



9 Clarke Street Dwelling
Approx location

LOWER LEVEL

Apartment 1:

2x2 Bedroom and Ensuite with shared Kitchen and Laundry space

UPPER LEVEL

Apartment 2 and 3:

2x2 Bedroom and Ensuite with shared Kitchen and Laundry space

Apartment 4:

2x2 Bedroom and Ensuite with shared Kitchen and Laundry space

PROPOSED UPPER FLOOR PLAN
1:100

DEVELOPMENT OF 5 & 7 CLARK STREET - DUNEDIN

NZIA PRACTICE



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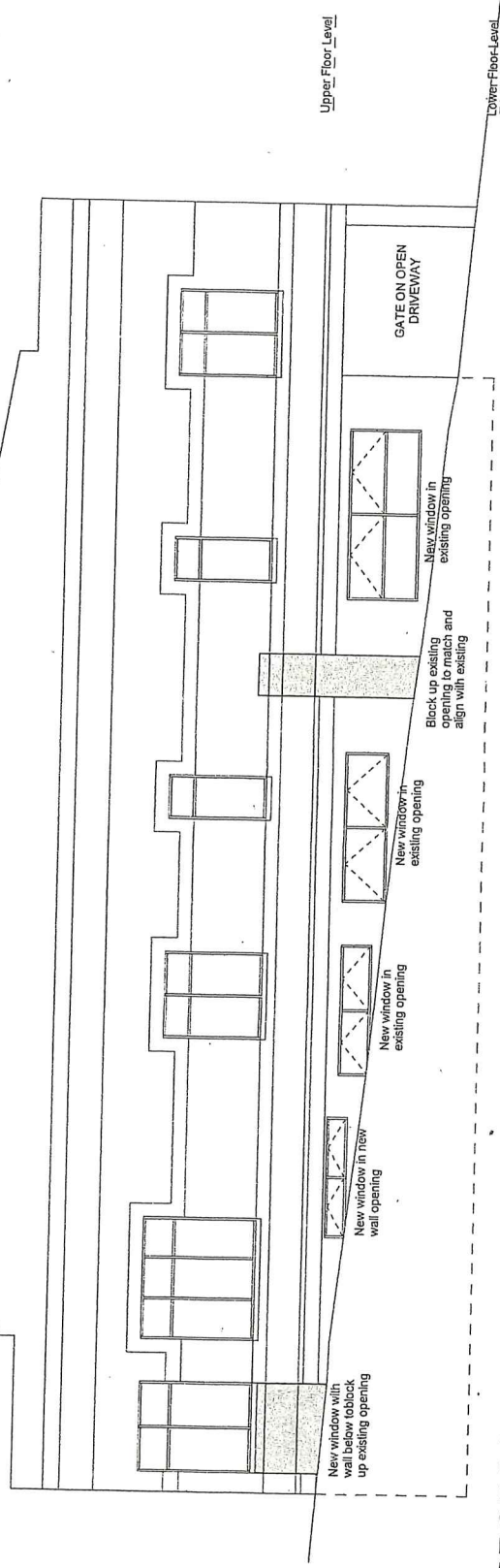
DEVELOPMENT OF 5 & 7 CLARK STREET-DUNEDIN



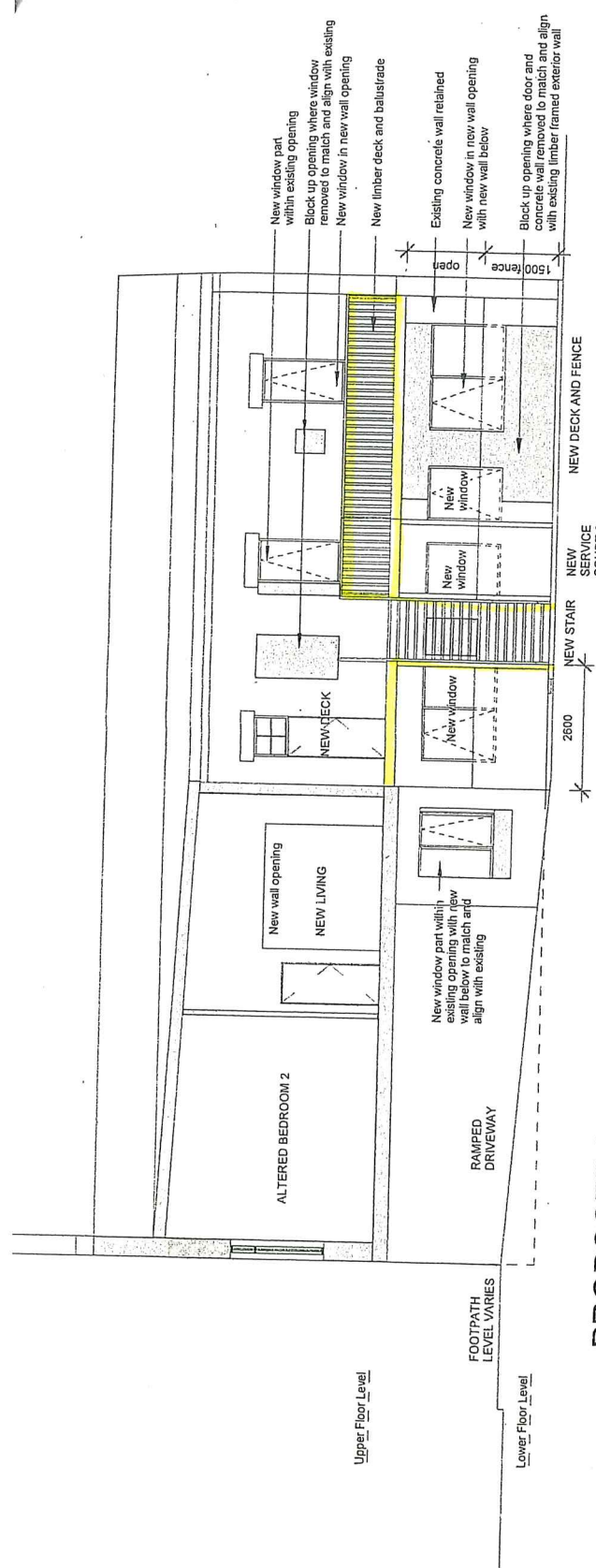
GARY TODD
ARCHITECTURE

1070-1481 554-1417 275-1504
info@garytodd.co.nz
1070-1481 554-1417 275-1504
1070-1481 554-1417 275-1504

PROPOSED EAST ELEVATION
1:100



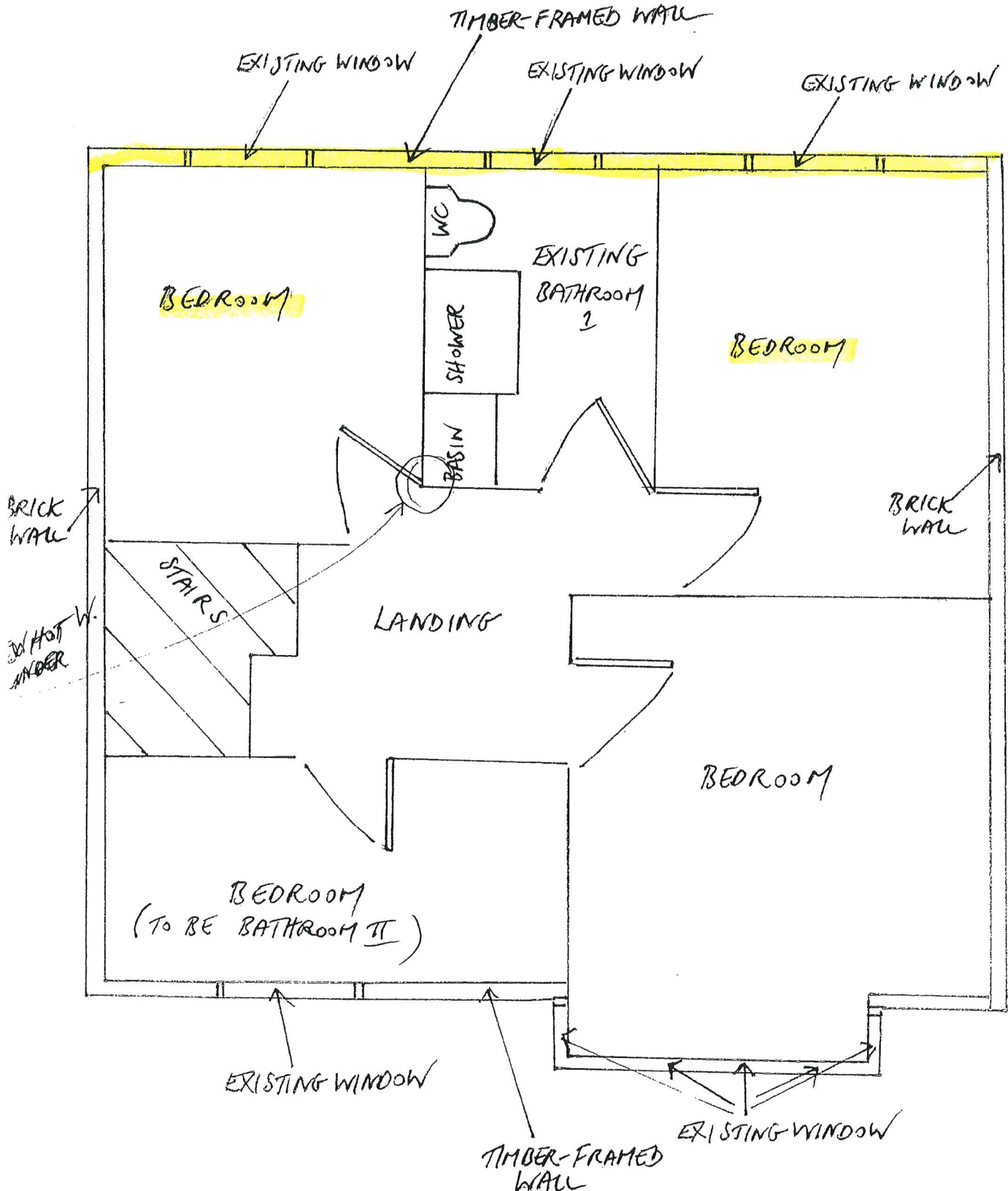
PROPOSED NORTH ELEVATION
1:100



TOP FLOOR - 9 CLARK ST. DUNEDIN
SITE PLAN 1:50

2008

2255



FRONT OF PROPERTY -
FACING CLARK STREET

Reference: Dev 100 /5 Clark Street/RMA 2001-0593
Enquiries to: Debbie Hogan
Direct Phone: 474 3331

109

16 October 2001

Thomas & Margaret Williams
C/- La Hood Allen Barristers & Solicitors
PO Box 5589
Moray Place
DUNEDIN

Attn: Michael Van Aart

Dear Michael

RESOURCE CONSENT APPLICATION: RMA 2001-0593
5 Clark Street
DUNEDIN

The above application was considered by Council's Senior Planner – Consents and **granted** under delegated authority on **11 October 2001**. The application was processed on a non-notified basis in accordance with Sections 93 and 94 of the Resource Management Act 1991.

DESCRIPTION OF ACTIVITY

The subject site is located on the western side of Clark Street, just south of the intersection with Maclaggan Street. There are two existing buildings on the site, built up to the street frontage, that combine to essentially form a single building two storey in places. The buildings contain three existing residential units and a vacant area. Parking is provided at the rear of the site via a vehicle access along the northern boundary plus a garage located underneath one of the flats. The site is legally described as Part Section 44 Block VII Town of Dunedin and contains a site area of 759m².

The proposal involves the conversion of the southern portion of the building that is currently vacant into a three bedroom residential unit. The previous tenant of this part of the building was the Powerdome Gym and associated lounge, bathroom and kitchen facilities which vacated the building in 1999. To convert the space into a residential unit essentially only requires internal partitions to create the bedrooms. The application states that two parks will be available for the proposed residential activity.

REASONS FOR APPLICATION

Transitional District Plan

The subject site is zoned **Industrial A** in the *Transitional District Plan (Dunedin Section)*. Residential activities are only provided in the form of caretakers residences, however no industrial activities are being undertaken on the site. Therefore the proposal requires consent as a **non-complying** activity in terms of the Transitional District Plan pursuant to Section 374(4) of the Resource Management Act 1991.

Proposed District Plan

The site is zoned **Industrial** in the *Dunedin City Proposed District Plan (1999)*. Under the Proposed

District Plan (1999) the activity is defined as a residential activity which are not provided for within the Industrial zone. Consent is required as a **non-complying** activity.

Planning Status

Overall, the proposed activity is considered to be a **non-complying activity**.

There are currently three residential activities on the site. The main building was constructed in 1927 for a funeral parlour and two flats (AAB19270836). A building consent from 1932 (AAB19320438) indicates that a third residence was already established on the site. It is therefore assumed that these activities were lawfully established at the time and retain existing use rights under section 10 of the Resource Management Act 1991.

PLANNING ASSESSMENT

Affected Persons

The written approval of the persons listed in the following table has been obtained. In accordance with Section 104(6) of the Act, where written approval has been obtained from affected parties, the consent authority cannot have regard to the effect of the activity on that person.

Person	Owner	Occupier	Address	Obtained	Date of Consent
Otago Motor Cycle Club	✓	✓	3 Clark Street	✓	2/9/01
G A Motors, Gary Ango's		✓	51 Maclaggan Street	✓	23/7/01
Alistair Broad	✓	✓	51 & 61 Maclaggan Street	✓	17/7/01

Effects on the Environment

The following effects assessment only takes into account the effects of the proposed activity that are relevant under Section 104(6). The Courts have determined that the effects of an activity on the environment should be considered in relation to the existing environment. The following assessment of the actual and potential effects of the proposed activity on the environment has been prepared on the basis that the environment is characterised by a mix of commercial, industrial and residential activities in a variety of well established buildings on the edge of the central area between High Street and Maclaggan Street.

Any actual or potential adverse effects on the environment of allowing the activity are considered to be no more than minor for the following reasons:

1. It is not anticipated that the proposal will give rise to adverse effects on the surrounding amenity beyond those parties from whom written approval has been obtained. The site currently contains three existing residential units, which have been established on the site at least since 1927. The proposal takes the number of residential units to four. The building has never been utilised solely for industrial purposes and its design makes it difficult to be used for such. The external appearance of the building is particularly attractive and lends itself to a residential use. The previous activity that occupied the vacant tenancy was a gymnasium. The conversion of part of the building to a fourth residential unit only requires internal alterations and no external change in the buildings appearance.

The surrounding area contains a mix of activities with an automotive garage located on the corner of Maclaggan Street adjoining the northern boundary of the site. The building at the rear of the site is used for general storage purposes and is built right up to the boundary with a solid brick wall extending the length of the shared boundary. The building to the south of the site is occupied

by a motorcycle club. The opposite side of Clark Street has established professional offices. Therefore the surrounding existing environment is not industrial by nature but rather is mixed use in character. In this regard there will be little or no change in the amenities of the area by the additional residential unit. The proposed activity is consistent with the surrounding area and the mix of activities that it contains.

2. The subject site is zoned Industrial under both District Plans and as such reverse sensitivity effects should be considered in terms of the introduction of a further residential activity into an industrial environment. Firstly with regard to zoning, the site is located on the periphery of the Industrial A zone under the Transitional District Plan (Dunedin section) being on the border with Residential G (special amenity for professional offices) and Commercial D on the opposite side of Clark Street. The intent of the Industrial A zone is to provide a transition between industrial, residential and commercial areas. In terms of the Proposed District Plan (1999) the site borders the Residential 4 zone to the south with the Central Activity zone opposite.

As stated above the surrounding environment reflects the zoning in that it is not industrial in nature but rather contains a mix of activities including residential, offices, warehousing and automotive repairs. Those industrial activities that do exist do not involve generation of noise or other effects. The site itself is more transitional in nature and the surrounding activities reflect this, with many activities being established for a number of years. As a result of these existing activities the level of amenity in the area is reasonable and at a level sufficient for residential activities. It is therefore considered that the proposed additional residential activity will not limit the operation of industrial activities that may occur within the area. It is noted that there is no vacant industrial land within the immediate vicinity and any activity would either involve re-use of existing buildings or replacement with new buildings.

3. It is considered that the use of the site for residential purposes will not give rise to an increase in demand of industrial land for non-industrial purposes due to the site characteristics and location. The site has historically been utilised mainly for residential purposes and never fully for industrial purposes. The design of the building is considered more appropriate for commercial or residential activities. The previous tenant was not an industrial activity and since they vacated the premises the tenancy has not been occupied. The tenancy only requires internal partitions for the residential activity to be undertaken. These partitions can just as easily be removed to enable another activity to be established. As such the use of the site will not lead to cumulative effects in terms of using industrial land for residential activities.
4. The Environmental Health Officer has reviewed the application and commented as follows in relation to reverse sensitivity issues. The site of the proposed residential activity is located further away from the garage than the existing residential land use. However it is immediately adjacent to a motorcycle club. The application states that the noise levels have been tested and that noise from the Club is unlikely to adversely affect tenants.

Noise is likely to be able to be heard within the proposed dwelling if a band was playing at the Motorcycle Club. Even low noise levels can affect sleep and could give rise to complaints from tenants. Noise levels measured within the proposed dwelling should not exceed 30-35 dBA Leq (NZS 6802:1999) when noisy equipment is being used. These levels are commonly used as design levels to protect against sleep disturbance.

If the premises are used for residential purposes it is important that these noise levels are not exceeded in order to protect the health of any person living in the dwelling. If the applicant cannot show that these levels can be achieved then it is recommended that the application be declined.

5. In light of the comments above, reverse sensitivity has been considered in relation to the industrial zone in which the subject site is located, but not other zones or activities. Internal noise has been addressed by the applicant and is considered important. The application states that noise levels were tested in relation to the adjacent motorcycle club, which is the immediately adjoining neighbour to the south with both buildings built up to the boundary. It further states that the levels tested satisfied all parties that it would not adversely affect any tenants in the proposed residential premises. The Motorcycle Club have provided their written consent to the proposal.

The site of the motorcycle club is actually zoned Residential under both District Plans. The motorcycle club site and the subject site, at 5 Clark Street, are both covered by the same noise levels under the Proposed District Plan (1999), being 55 dBA daytime and 40 dBA night time. Therefore the activities of the motorcycle club must comply with these standards along with the general duty to avoid, remedy or mitigate any adverse effect on the environment under section 17 of the Resource Management Act 1991. The existence of the motorcycle club and other activities is obvious to any potential residents and in any event the activities of the motorcycle club are not regular with any complaints able to be dealt with under excessive noise provisions. Likewise the motorcycle club themselves are obviously aware of the adjoining residential activities and have provided their consent to the proposal. It is therefore not considered necessary to place any conditions in relation to internal insulation and noise levels within the proposed residential activity.

6. The Policy Planner reviewed the application and provided comments. The primary issue, given that there is already existing residential activities on the site, is the addition of further residential development into the Industrial zone. Cumulative effects need to be considered, and contrary to the application, which states that the existence of a residential activity reduces cumulative effects, the opposite is the case. Four residential activities on site will increase the potential for reverse sensitivity. The proposal is contrary to the Objectives and Policies and will lead to potential effects for establishment of industrial activities in the area.
7. As previously stated it is not considered that the proposed fourth residential unit will result in reverse sensitivity or restrict the ability of industrial activities to operate in the area. The building has three legally established residential activities, it is located on the edge of the industrial zone under both the Transitional District Plan (Dunedin section) and the Proposed District Plan (1999). The line of the zone is essentially arbitrary and could have easily have been drawn such that it did not include the subject site. The surrounding environment is not industrial in nature but is a mix of activities, including industrial activities that are generally not noise or odour generators. It is therefore considered that the proposal will not inhibit industrial activities from establishing in the area.
8. The Technical Engineer, Transportation Planning, has reviewed the application and has made the following comments in relation to parking and access.

Parking

The converted building will require 2 parks as it will have a floor area greater than 150m². The adjoining tenancy holds two residential units each with a floor area less than 150m² requiring only one park. The other existing residence appears to be close to 150m² and may require either one or two parks but it is assumed they only need one. Therefore 5 parks are required overall.

Four parks are provided on site. These parks are all existing and the three at the back are identified as being set aside for existing residential units. Transportation Planning does not

consider the existing amount of carparking will be adequate to provide for an extra residential unit.

From the way the three parks at the back are identified as one for each unit it appears that the garage is not set aside for parking of any unit. If this garage is being shown as on-site parking then it should be used by one of the flats.

There are a large number of kerbside parks on Clark Street with parking directly outside the site restricted to a 60 minute limit. During the day all the parking is completely full of commuter vehicles. Due to the large demand for parking in this area it is unreasonable for residential dwellings to rely on kerbside parking.

The parking behind the building is currently at 90° angle to the boundary but is shown as at a 60° angle on the plans. On the plans the 60° angle parks are too short and will have to be lengthened to comply with the parking performance standards. The existing parks appear to work well at the moment and there is no reason why the parks should be changed. An additional park could be provided at the side of the existing parks. It would be recommended that this park be at an angle for ease of manoeuvring.

The parking area behind the buildings is hard surfaced and all parking spaces are permanently marked.

Access

The access to the parking behind the buildings is 4.0 metres wide, hard surfaced with an existing vehicle crossing. The garage also has a hard surfaced access with an existing vehicle crossing.

Clark Street is a local road so it is acceptable for vehicles to either reverse onto or off it.

Overall Transportation Planning considers the effects of the proposal will be less than minor provided conditions relating to the issues above are placed on any consent granted.

9. The Planning Engineer, Water Business Unit, has reviewed the application and requires a separate water service connection for the unit to avoid adverse effects of the proposal on the water infrastructure. These will be placed on the consent as a condition.
10. The Engineering Officer, Waste Services, reviewed the application and provided comments. Using the Residential 3 zone density requirements under the Proposed District Plan (1999) three units could be constructed as of right. The proposal takes this to four residential units.

Waste Services main concern with developments like this one is whether or not the population density created by the development is at an acceptable level. Within the Residential 3 zone the average population density is 200 persons per nett hectare. It is appreciated that this activity is taking place within the Industrial Zone where wastewater flows can be much higher than normal residential activity. With the addition of the proposed 3 bedrooms within this unit the total number of bedrooms on site will be 10. Based on 1 person per bedroom the average population density created is 132 persons per net hectare. This being well below the normal average population density of a Residential 3 zone.

This proposed fourth unit at the above location will have a no more than minor effect on the waste water system. Therefore Waste Services has no issue with this Resource Consent.

CONSENT DECISION

*That pursuant to Sections 34(4) and 105(2A) and after having regard to Part II matters and Sections 104 and 105 of the Resource Management Act 1991, the Dunedin City Council **grants** consent for a **non-complying** activity to establish a fourth residential activity within an existing building at 5 Clark Street, Dunedin and legally described as Part Section 44 Block VII Town of Dunedin.*

Pursuant to Section 105(1)(c) of the Resource Management Act 1991 resource consent be granted subject to the following conditions imposed under Section 108 of the Act:

- (1) That the proposed activity shall be constructed generally in accordance with the David T Rutter plans entitled "Proposed Alterations to Existing Building for Mr. T. Williams at 5 Clark Street, Dunedin. Contract No. 1306" dated June 2001 and the details submitted with the application dated 19 September 2001, except where amended by the following:*
 - a) That five parking spaces are to be provided on-site. These parking spaces shall comply with the minimum dimensions outlined in Appendix 20B of the Proposed District Plan (1999).*
 - b) That any additional parking spaces provided are to be permanently marked.*
 - c) That two of the parks behind the buildings are to be identified for the exclusive use of tenants in the new residential unit at 5 Clark Street.*
 - d) That a 20mm diameter metered water service connection with a manifold box at the roadside property boundary with Clark Street be installed to serve the new residential unit.*

Advice Note(s)

- (1) The applicant is reminded that this resource consent is not a licence to create adverse effects. There is still a duty to avoid, remedy or mitigate adverse effects and to avoid unreasonable noise. As a consequence, notwithstanding any consent given, the provisions of Sections 16 and 17 of the Resource Management Act 1991 and the Health Act 1956 still apply and action may be taken against any nuisance caused.*
- (2) Transportation Planning recommend that the existing parking spaces behind the buildings be kept at a 90° angle instead of the 60° angle as shown on the plans. The additional park to be provided beside the existing parks should be installed at an angle to aid manoeuvrability.*
- (3) That an "Application for a Water Supply" be lodged with the Water Manager.*

REASONS

Effects

In accordance with Section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and are outlined above. It is considered that the proposed activity will have less than minor adverse effects on the environment and therefore passes the threshold tests set out in Section 105(2A)(a) of the Resource Management Act 1991.

District Plan – Objectives and Policies

In accordance with Section 104(1)(d) of the Resource Management Act 1991, the objectives and policies of the Transitional and Proposed District Plans were taken into account in assessing the application.

Objective 23 of the Transitional District Plan (Dunedin section) relates to maintaining a high degree of environmental quality through the conservation of rural and urban amenities by placing controls on development within the City. Objective 46 seeks to recognise the importance of industry in Dunedin's economy through zoning of land. Objective 51 provides for maximum freedom for development on industrial sites with controls relating to its affect upon the appearance and amenities of adjacent properties and surrounding area.

Objective 4.2.5 and Policies 4.3.7 to 4.3.9 of the Proposed District Plan (1999) seek to provide a planning framework, based on zoning, to manage adverse effects of activities and avoid indiscriminate mixing of incompatible uses. Objective 10.2.3 and Policy 10.3.2 seeks to ensure non-industrial activities in industrial areas do not limit the operation of industrial activities. Objective 21.2.2 and Policy 21.3.3 seek to ensure that noise generated by activities does not adversely affect health, safety and amenity of people and communities. Objective 20.2.2 and Policy 20.3.4 seek to ensure that land use activities avoid, remedy or mitigate adverse effects on the transportation network and that traffic generating activities do not adversely affect the operation of the roading network, particularly safety.

The proposal is consistent with the objectives and policies of the Proposed District Plan (1999) and some but not all the objectives and policies of the Transitional District Plan (Dunedin section).

Any adverse environmental effects resulting from the proposal are considered to be minor, for the reasons outlined in Points (1)-(10) under the heading Effects on the Environment above, thereby satisfying the first limb of section 105(2A) of the Resource Management Act 1991. In addition, the proposal is not inconsistent with the relevant objectives and policies of the Proposed District Plan (1999), thereby satisfying the second limb. Section 105(2A)(b) of the Act states that an activity will not be contrary to the objectives and policies of where there is a relevant plan and a relevant proposed plan, either the relevant plan or the relevant proposed plan. Therefore in order to pass this limb of the Act the proposal must be consistent with the provisions of the Transitional District Plan or the Proposed District Plan (1999). This was upheld by the Court in Back Country Skies Alliance Inc. v Central Otago District Council.

Therefore, while the proposal is contrary to some objectives and policies of the Transitional District Plan (Dunedin section), it is considered that it does satisfy both limbs of section 105(2A) of the Act. In this case, Council has the discretion to grant the consent under section 105(4), which it does.

Part II Matters

The proposed activity has also been assessed in terms of Part II matters of the Resource Management Act 1991. For the reasons outlined in the above, the proposed activity is considered consistent with Section 5 (2)(c); *“Avoiding, remedying, or mitigating any adverse effects of activities on the environment”*, Section 7(c) *“The maintenance and enhancement of amenity values”* and Section 7(f) *“The maintenance and enhancement of the quality of the environment.”*

COMPLIANCE WITH CONDITIONS

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. Exercise of the resource consent prior or contrary to compliance with the conditions imposed implies acceptance of the conditions and may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.

DURATION OF CONSENT

It is brought to the consent holder’s attention that under the terms of Section 125 of the Resource Management Act 1991, this consent shall lapse if effect has not been given to it within two years or Council has not granted an extension of time.

BUILDING CONSENT

This is only a resource consent and a separate application for building consent may be required before any work is undertaken on the site. Please check with the Building Control Office, Development Services.

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RIGHTS OF APPEAL

In accordance with Section 357 of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
P O Box 5045
DUNEDIN

Attn: Senior Planner- Enquiries 1st Floor

Yours faithfully

Debbie Hogan
PLANNER

13 April 2011

Gourley Investments Ltd
C/- John Willems
TL Survey Services Ltd
PO Box 901
Dunedin 9054

Dear John

RESOURCE CONSENT APPLICATION: SUBDIVISION: SUB-2011-26
LAND USE: LUC-2011-115
5 CLARK STREET
DUNEDIN

Your application for the subdivision of the land at 5 Clark Street, Dunedin, and land use consent for establishment of residential activity on Industrial 1-zoned land, was processed on a non-notified basis in accordance with sections 95A to 95F of the Resource Management Act 1991. The application was considered by a Senior Planner under delegated authority on 13 April 2011.

I advise that the Council has **granted** consent to the application with conditions. The decision and conditions are shown in the attached certificate.

DESCRIPTION OF ACTIVITY

An application has been received for the subdivision of the land at 5 Clark Street, Dunedin, into two lots. The subject site is legally described as Part Section 44 Block VII Town of Dunedin, held in Computer Freehold Register OT365/216 (Limited as to Parcels), and has an area of 759m². It is a rectangular site with frontage to Clark Street along its longer side. There is an existing two-storey dwelling, and a one to two-storey commercial-style building used currently for residential purposes. Both buildings are built to, or close to, the front boundary with the doors opening out onto the footpath.

The proposal is to subdivide the site into two, separating the buildings onto their own sites. Proposed Lot 1 will be an irregular shaped site containing the existing dwelling. It will have an area of approximately 229m². Proposed Lot 2 will be a site of approximately 530m², and will contain the other building. On-site parking will be available for both sites.

The application notes that the title is 'limited as to parcels' and, as such, the boundaries of the subject site are not guaranteed. The proposed subdivision will define the external boundaries of the subject site accurately but may, because of the nature of limited titles, create a third lot. This Lot 3, if created, will be a narrow slither of land between the extent of the occupation on-site and the paper dimensions of the title. The applicant suggests that this lot, if created, will be amalgamated with the adjoining property of 61 Maclaggan Street at the instigation of that property owner. There is no proposal to undertake this amalgamation, if relevant, as part of this subdivision.

REASONS FOR APPLICATION

The subject site is zoned **Industrial 1** in the District Plan. There are no hazards identified for this land on the Hazards Register and no designations for this land applicable to this application.

Subdivision is a restricted discretionary activity in the Industrial zone where the proposal complies with Rules 18.5.3 to 18.5.6, 18.5.9, 18.5.10, and 18.5.12. The proposed subdivision is a **restricted discretionary** activity pursuant to Rule 18.5.1(iv).

The new lots will both have residential dwellings. Residential activity is not a permitted activity in the Industrial 1 zone in this area. Accordingly, the residential activity is considered to be a **non-complying** activity pursuant to Rule 10.5.5(ii).

ASSESSMENT OF EFFECTS

Affected Persons

No affected person written approvals have been submitted with the application. No persons are considered to be adversely affected for the reasons set out in the 'Effects on the Environment' section below.

Effects on the Environment

The following effects assessment only takes into account the effects of the proposal that are relevant under section 104(3). The Courts have determined that the effects of an activity on the environment should be considered in relation to the existing environment. The following assessment of the actual and potential effects of the proposal on the environment has been prepared on the basis that the environment is characterised by mixed industrial, commercial and residential activity. The land to the south of the subject site is zoned Residential 4, but the adjacent land use is a motorcycle club. There is industrial activity to the west, and commercial/office space to the north and east.

The proposal has been assessed using the assessment matters of sections 10.8 and 18.6.1 of the District Plan. Any actual or potential adverse effects on the environment of allowing the activity are considered to be no more than minor for the following reasons:

1. Lot Size and Dimensions (18.6.1(q)) and Physical Limitations (18.6.1(k))

The proposed subdivision is expected to create two lots, each one containing an existing building. Proposed Lot 1 will be the northern lot, and will have an area of approximately 229m². It will contain an existing two-storey dwelling, and will have vehicle access to Clark Street via an existing driveway. Parking is available on-site to the rear of the building.

Proposed Lot 2 is a long building built to all four boundaries. The top floor is used for residential purposes, while the lower floor is currently storage space. The slope of Clark Street effectively means the building in a single-storey structure at its southern end, but two-storey at its northern. A driveway through the building provides access to a parking area at the northwest corner of the site.

The Industrial 1 zone does not have a set minimum lot size, and accordingly, both new lots are of acceptable size. Both also have frontage and access to legal road. The two new lots have established occupation and land use which is not changing with the proposed subdivision. Accordingly, there is no expectation that the proposed subdivision will create any lot having physical limitations rendering it unsuitable for future use.

Having noted that, it is possible that a third lot will be created as a result of the 'limited' status of the subject site's title and the guaranteed title of next door, 61 Maclaggan Street. This lot will be a very narrow strip of land which will have no practical use. Such strips can occur during the surveying of limited titles where there is a discrepancy between the dimensions of the lot, the existing occupation, and the

physical extent of the adjacent title. The applicant proposes creating the third lot if required, and leaving the amalgamation of the lot with the adjoining property as a separate matter to be dealt with outside of this subdivision process. Should 'Lot 3' be created, it will be too small to be utilised in any way except by the adjacent properties.

2. Easements (18.6.1(i))

There are no existing easements registered on the title of the subject site, and no easements proposed as part of this subdivision.

3. Infrastructure (18.6.1(d), (e), (i), (j), (n), (o), and (p))

The Consents and Compliance Officer, Water and Waste Services Business Unit, has considered the subdivision proposal. He advises that Council's GIS records indicate there is a 100mm water service main located in Clark Street along with a 150mm foul sewer line. The nearest stormwater service is a 1350mm stormwater sewer located in Maclaggan Street. A review of the rates database indicates that four water and drainage charges are paid for the subject site, and GIS records indicate three separate water services at the site.

The Consents and Compliance Officer advises that the water connections, the stormwater services and the foul sewer services for the new lots can continue to utilise the existing arrangements. However, the existing drainage records for the site are unclear, and do not indicate separate drainage. A site visit with the consent holder will be required to confirm the status of the drainage. Parts 4 and 5 (Stormwater Drainage and Wastewater) must be complied with.

Water and Waste Services Business Unit have no issues with the proposal subject to the following conditions:

All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Services Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.

'The existing drainage records for the site are unclear and do not indicate separate drainage. A site visit with the applicant is required to confirm the status of the drainage.'

The first recommended condition is more appropriate as an advice note, and has been attached to the decision as such.

4. Transportation (18.6.1(c))

The Transportation Planner, Transportation Operations, has visited the site and considered the application. He notes that Clark Street is a Local Road in the District Plan roading hierarchy.

The Transportation Planner notes that vehicle access to Lot 1 will be via existing crossing from Clark Street. The existing access is formed to a width of 4m, and is hard surfaced for its full duration. While located only 13m from the Maclaggan Street/Clark Street intersection, the access is existing and the subdivision will not introduce any new effects arising from its use. Given the residential use of this site, Transportation Operations considers this access to be adequate.

Vehicle access to Lot 2 will also be via the existing crossing from Clark Street. The existing access is formed to a width of 3m, and is hard surfaced for its full duration. Transportation Operations have no issue with the continued use of this access by existing residential activities on-site.

The two units on Lot 1 require one car parking space each (or two in total), as do the residential units on proposed Lot 2. There is sufficient open area on-site to the rear of the buildings for this parking to be provided. Clark Street is a Local Road. Therefore, vehicles are permitted to reverse from the new lots. However, it is noted that on-site manoeuvring is available on each new lot.

Transportation Planning considers that the adverse effects on the transportation network will be no more than minor, and have not recommended any conditions for consent.

5. Hazards (18.6.1(t))

There are no hazards identified for this site on the Hazards Register. Council's Consulting Engineer, MWH, has noted that MWH has no records of hazards affecting this site, and did not report further on the proposal.

6. Building Control

Council's Building Safety Officer, Development Control, has considered the application. He has not identified any issues in regard to the existing buildings.

7. Amenity Values and Character

Residential activity is not an expected component of this Industrial 1 zone but is, in this case, well established on the subject site. One building is clearly a residential dwelling, although there are no Council records as to when it was built. The second structure was built or altered in 1927 as a, 'dwelling, workshops, and mortuary chapel'. Over the years it has had a number of changes in use, the latest being residential use. Resource consent RMA 2001-0593 was issued on 16 October 2001 for the establishment of a fourth residential unit on the subject site, being situated within this building. The details of the other three units were not specified in the consent, but it is presumed that two were in the residential building (as at present), and the third was the 'dwelling' for the mortuary of 1927.

The proposed subdivision does not promote any changes in use for the sites; it merely allows the two buildings to be held in separate ownership. The surrounding area is of mixed use, with residential use in close proximity, and non-residential use of Residential 4-zoned land immediately next door. Therefore, the existing residential activity is not out of character for the area, and is, in any case, well-established at this location and in these buildings. The proposed subdivision is not expected to compromise the integrity of the Industrial 1 zone, or introduce any reverse sensitivity issues.

CONSENT DECISION

Subdivision SUB-2011-26

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being the subdivision of the land at 5 Clark Street, Dunedin, being the land legally described as Part Section 44 Block VII Town of Dunedin (CFR OT365/216) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as shown on the attached certificate.*

Land Use LUC-2011-115

*That, pursuant to sections 34A(1) and 104B of the Resource Management Act 1991, and having regard to Part II matters and sections 104 and 104D, the Dunedin City Council **grants** consent to a **non-complying** activity being the continued residential activity within existing buildings on Lots 1 and 2 SUB-2011-26 at 5 Clark Street, Dunedin, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

REASONS

Effects

In accordance with section 104 of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed subdivision have been assessed and are outlined above. It is considered that the proposed activity will have no more than minor adverse effects on the environment.

District Plan – Objectives and Policies

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan were taken into account when assessing the application.

The proposal is considered to be consistent with the following objectives and policies:

- **Objective 4.2.1 and Policy 4.3.1** seek to maintain and enhance the amenity values of Dunedin.
- **Objective 10.2.2 and Policy 10.3.1** seek to manage in a sustainable manner the natural and physical resources of the Industrial Zone.
- **Objective 18.2.1, and Policy 18.3.1** seek to ensure that subdivision activity takes place in a coordinated and sustainable manner.
- **Objective 18.2.2 and Policy 18.3.5** seek to ensure that physical limitations are identified and taken into account at the time of subdivision activity.
- **Objective 20.2.4 and Policy 20.3.5** seek to ensure that any adverse effects on the safety of the transportation network from development are avoided, remedied or mitigated.

Section 104D

Section 104D of the Resource Management Act requires 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 that the adverse effects on the environment will be no more than minor, or 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. In my opinion, the established residential activity on new lots will not have adverse effects which are more than minor, and will not be contrary to the objectives and policies of the District Plan. Therefore Council can exercise its discretion under Section 104D to grant consent subject to the recommended conditions.

Other Matters

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 Plan integrity are considered relevant here. These issues have been addressed by the Environment Court (starting with *A K Russell v DCC (C92/2003)*) and case law now directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where the Plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the District Plan.

In this case, the land use component of the proposal is non-complying because this Industrial 1 zone does not provide for residential activity. In actual fact, the residential use of the subject site is well-established, with one building being clearly a residential dwelling in design. Its date of construction is unknown, but will be late 19th or early 20th century. The other building has one residential unit dating from 1927, and the second consented in 2001. It is not considered that the continued use of the buildings on-site for residential activity in this context will challenge the integrity of the District Plan.

Part II Matters

The proposed activity has also been assessed in terms of Part II matters of the Resource Management Act 1991. For the reasons outlined above, the proposed activity is considered consistent with section 5(2)(c); "Avoiding, remedying, or mitigating any adverse effects of activities on the environment", section 7(c) "The maintenance and enhancement of amenity values" and section 7(f) "The maintenance and enhancement of the quality of the environment."

RIGHTS OF OBJECTION

In accordance with section 357 of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
P O Box 5045
Dunedin 9058

Attention: Senior Planner – Enquiries, ground floor Plaza.

DEVELOPMENT CONTRIBUTIONS

No development contributions are required in respect of this subdivision proposal. Development contributions are assessed in accordance with Section 198 of the Local Government Act 2002 and the Dunedin City Council Policy on Development Contributions of the adopted 2009/10 – 2018/19 Community Plan.

Yours faithfully

Lianne Darby
PLANNER

Consent Type: Subdivision & Land Use

Consent Number: SUB-2011-26 & LUC-2011-115

Location of Activity: 5 Clark Street, Dunedin

Legal Description: Part Section 44 Block VII Town of Dunedin (CFR OT365/216).

Lapse Date: 13 April 2016, unless the consent has been given effect to before this date.

Subdivision SUB-2011-26

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being the subdivision of the land at 5 Clark Street, Dunedin, being the land legally described as Part Section 44 Block VII Town of Dunedin (CFR OT365/216) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:*

1. *The proposal shall be given effect to generally in accordance with the plan prepared by TL Survey Services entitled, 'Proposed Subdivision of Pt Sec 44 Blk VII Town of Dunedin', dated January 2011, and the accompanying information submitted as part of SUB-2011-26 received on 23 March 2011, except where modified by the following:*
2. *That prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *That if a requirement for any easement for services is incurred during the survey, then those easements shall be granted or reserved and included in a Memorandum of Easements.*
 - b) *That should, during the surveying of Lots 1 and 2, a residual strip of land be created because of the underlying 'limited as to parcels' title, the strip can be shown on the plan as 'Lot 3'.*
3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *The subdivider shall meet on-site with Council Water and Waste Services Business Unit staff with a view to determining the present status of the private drainage serving the existing buildings.*
 - b) *If the private drainage is non-compliant with Sections 4 and 5 of the Code of Subdivision and Development 2010, the drainage is to be upgraded so as to be compliant. Alternatively, approval from Water and Waste Services Business Unit shall be obtained to say that the drainage is at an acceptable standard in the circumstances.*

Land Use LUC-2011-115

That, pursuant to sections 34A(1) and 104B of the Resource Management Act 1991, and having regard to Part II matters and sections 104 and 104D, the Dunedin City Council **grants** consent to a **non-complying** activity being the continued residential activity within existing buildings on Lots 1 and 2 SUB-2011-26 at 5 Clark Street, Dunedin, subject to conditions imposed under section 108 of the Act, as follows:

1. The proposal shall be given effect to generally in accordance with the plan prepared by TL Survey Services entitled, 'Proposed Subdivision of Pt Sec 44 Blk VII Town of Dunedin', dated January 2011, and the accompanying information submitted as part of LUC-2011-115 received on 31 March 2011.

Advice Notes:

1. In addition to the conditions of a resource consent, the Resource Management Act establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
3. 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.
4. The requirements of Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin City Council's 'Code of Subdivision and Development 2010' shall be complied with.
5. It is advised that any drainage issues and requirements (including the necessary works) will be addressed via the building consent process.
6. All aspects of the proposal relating to the availability of water for fire-fighting must 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.
7. If Lot 3 is created as part of this subdivision, it is expected that the amalgamation of this Lot 3 with another title will be undertaken by the property owners to avoid creating a separate title of this size.

Issued at Dunedin this 13 April 2011.

Lianne Darby
Planner

COPY OF PLAN: Not to Scale.

