

- 1 My full name is Donald Ray Anderson. I hold the degree of Bachelor of Architecture and post graduate diploma of Town Planning both from the University of Auckland. I am a full member of the New Zealand Planning Institute and a Fellow of the New Zealand Institute of Architects. I have been involved in planning matter, predominately in Otago and Southland since graduating in 1971. I practice as a planning consultant in Dunedin that trades as Anderson&Co, of which I am a shareholder and director.
- 2 I have read the Practice Note 2014 issued by the Environment Court. This evidence has been prepared in accordance with it and I agree to comply with it. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 3 Conclusions reached:
 - Re-consenting the existing lounge and kitchen, probably with an On-Licence, will enable the physical resource to continue to provide a social hub for the local community. This is consistent with the RMA purpose.
 - Consenting the proposed accommodation will enable 25 residents to have appropriate housing. That is also consistent with the RMA purpose.
 - The relevant objectives and policies in both the operative and proposed district plans have not anticipated the proposed style of co-operative accommodation but the proposal is not contrary to those objectives and policies. The Courts have explained that *"not contrary implies being opposed to the objectives and policies (but not the rules) of the plans"* The recommending report at para 187 endorses my own conclusion that the proposal is *"not contrary"*
 - Internalising the environmental effects associated with site coverage, earthworks, amenity open space and separation between units will have little, if any significant effect to neighbours or the community.
 - The side yards and maximum height standards for the permitted activities in the zone are met.
 - The permitted front yard breach arises from the wish to continue the historic position of the building on the site as was accepted in granting consent LUC-2010-49, and which also meets the needs of the future residents of the 5 units concerned.
 - The height plane angle breach on the south corner of the Bone Street frontage will have no more than a minor environmental effect.
 - An arrangement is in place with the owners of 5 Bone Street (Mr and Mrs Fraser) that will have effect on the granting of the consent sought.
 - Granting the consent sought will enable the community to express its level of comfort for the proposal as applied for. That is the appropriate way to determine whether the co-operative style of the proposed accommodation will be welcomed into Dunedin.
- 4 My evidence covers the following:
 - An introduction to the Shiel Hill tavern
 - The new owners' aspirations
 - The operative district plan provisions
 - The City Planning recommending report
 - The submissions received

It is therefore broader than planning evidence in order to provide the necessary back ground to assist the pre-hearing reading of the evidence. Given the March 2015 amendment to the RMA, the applicant's evidence has had to be substantially prepared in the absence of the recommending report.

5 Introduction

- 5.1 According to Council's records, the original wooden hotel on 140 Highcliff Road was built in 1923. The earliest aerial photograph is 1947 shows the hotel extending across the adjoining site at 148 Highcliff Road. I have searched the titles of both 140 and 148 Highcliff Road and found that in 1943 both were owned by Arthur Tilbury, hotel keeper. This joint ownership continued until the boundary adjustment subdivision in 2011 and the sale of 148 Highcliff Road to Mr and Mrs Forlong in 2012.
- 5.2 In 1975 the original hotel was altered to a tavern by New Zealand Breweries by the addition of the restaurant and the removal of the eastern end of the building to provide a vehicle entrance direct from Highcliff Road into the carpark as it exists today. A casino was added alongside the public bar in 2001. The restaurant was promoted as a family destination with outstanding views out towards the beaches of St Kilda and St Clair and the extensive residential area between. The public bar was utilized for club activities such as the Otago Peninsula Lion Club monthly meetings.
- 5.3 In February 2010, Council granted consent (LUC-2010-49) for the operation of the Shiel Hill tavern at 140 Highcliff Road, together with the yard and height plane angle breaches in respect to the existing dwelling at 148 Highcliff Road. There was one condition of consent that

required that the proposal be constructed in general accordance with the plans and relevant details submitted with the application. That resource consent has been given effect to and the land use consent did not limit its duration.

5.4 Cutler Investments Ltd purchased the tavern in April 2011 and continued to operate it on much the same basis until it ceased trading in March 2015 when the premises was purchased by the applicant, Cuisine Dunedin Ltd, since renamed Shiel Hill Properties Ltd.

6 The Applicant

6.1 Since the purchase, the owners have been using the existing kitchen for the preparation of take-away food and have applied for an On-Licence liquor licence, the submission period having expired on 5 February 2015. The applicant proposes to continue to use the existing lounge as an on-licence facility, where patrons can enjoy good food and liquor based upon a community friendly atmosphere. Consideration was given to applying for a Club Licence under the sale of liquor Act so that only members and their guests would be able to use the facilities. But such a licence is limited to a not-for-profit body corporate /permanent club charter.

6.2 To summaries, the Shiel Hill hotel/tavern has been a feature of the Shiel Hill/Waverley area for over 90 years. It is the applicant's intention to continue that community facility in a form that is financially sustainable.

7 Due Diligence

7.1 During due diligence prior to purchase, the applicant quickly identified the following:

- The existing lounge bar and kitchen were of a particularly high quality, and provided an outstanding view out across to the St Kilda and St Clair beaches. Being from Auckland, the applicant considered this to be a "treasure" that made the site special.
- The public bar and casino facility, together with the adjoining manager's accommodation were redundant in the face of the lower alcohol driving limits. That redundancy was reinforced by the equally significant change that food be available as part of the outcome sought by the liquor law reform.
- The existing car park was a resource that had potential for higher and better use in terms of the community, based upon the expectation that driving associated with drinking alcohol was actively being discouraged.

7.2 The above lead to the inevitable conclusions that:

- The lounge bar and kitchen had good bones and needed to be retained.
- The public bar, casino, and manager's accommodation needed to be demolished
- Another more productive use needed to be found for the carpark.

8 District Plan Provisions

8.1 The site is zoned Residential 1 in the operative district plan and general residential 1 in the proposed district plan. At 1665m², 140 Highcliff Road could be subdivided into 3 lots containing just 2 residential units while retaining the lounge bar and kitchen. With a rateable land value of \$100,000.00 per 500m² residential lot and retaining the lounge bar and Kitchen, the 2 additional residential lots would have a rateable land value of \$200,000.00.

This option would not represent sustainable management for the lounge and Kitchen would not be financially viable.

8.2 The proposed district plan offered an alternative option. As will be explained later in this evidence, the objectives of the residential zones are to provide primarily for residential activities with a limited number of compatible activities that can maintain a good level of amenity on surrounding properties. The rules allow one habitable room per 100m² (16.65 habitable rooms on 140 Highcliff Road ignoring the lounge bar and kitchen) subject to a number of performance standards.

The option provided some support for an integrated lounge bar/kitchen and residential option.

8.3 The applicant studied the demographics of Andersons Bay/Vauxhall/Inner Peninsula census information and concluded as follows:

- There are no available community based social facilities in the combined area other than those that required a club membership. There were retail and food outlets at the Andersons Bay terminus and in Musselburgh, both of which were well beyond walking distance and neither provided or promoted a social setting.
- The 2013 census indicated that the Andersons Bay/Vauxhall/Inner Peninsula had a static population but within that population, 30% of the residents were on superannuation or pension, and in the same demographic, there was a 10% increase in the number living alone. While unable to extract the data for more confined catchment around 140 Highcliff Road, the

applicant concluded that there appeared to be sufficient potential to justify investigating the option of suitable residential accommodation for the aged within the area.

- The model already available at the various retirement complexes provided the applicant with the idea of residential units where the residents would have access to the existing lounge bar and kitchen facilities. The design brief included providing the maximum number of units on the same level as the lounge bar and kitchen so as to maximise access, providing lift access for units below that level and from the on-site basement carpark.

8.4 Today's proposal is the result. It comprises the following:

- Retention of the existing lounge bar and kitchen and its continued use by the community subject to the issue of an On-Licence that has been applied for. This requires consent to change the condition of consent in LUC-2010-49 to reflect the reduced extent of that building. There is no proposal to alter either the existing foot print of the lounge bar and kitchen or its ramped entry from Highcliff Road.
- The excavation of the majority of the existing carpark so that it is level. The depth of the excavation varies from 1.8m on two corners to a maximum of 3.76m. The fourth corner is slightly raised above the existing ground level (200mm)
- Above the carpark, the proposal has 6 type A units adjacent to the boundary with Mr and Mrs Fraser at 5 Bone Street and 4 type B units. They have floor areas of 37m² and 46m² respectively.
- On the next level (same as the lounge bar and kitchen) the proposal has 11 type A units and 4 type B units plus a communal laundry. There is a glazed atrium providing light and weather protection between the two residential floors. The treatment of the atrium is still under consideration but as it is internal, its effects are all internalised.
- The exterior onto Highcliff Road (north west elevation) is single storied, mostly comprising glazing with a skylight above door height. The required front yard to Highcliff Road has been reduced to 1.5m. LUC-2010-49 consented to 70% of that reduction. This application seeks consent to continue that reduction for the entire frontage to Highcliff Road. The exterior onto the common boundary with 148 Highcliff Road (Mr and Mrs Forlong) is shown as the north east elevation on the drawings is single storied at the road end and two storied (6.2m) at the other end because of the sloping ground level along the common boundary, and comprising two blank walls at each end and four sets of windows between. The carpark is below the existing ground level and will therefore not be visible from the adjoining property. The exterior on the common boundary with 5 Bone Street (Mr and Mrs Fraser) is shown as the south east elevation on the drawings is two storied at the right hand end and three storied on the left hand end because of the sloping ground level along the common boundary and comprising twelve sets of windows. The exterior to Bone Street shown as the south west elevation on the drawings, is three storied comprising the carpark entrance, a blank end wall, and four sets of windows set back a minimum of 13m from the road boundary. The right hand end of the south west elevation is 9m above the existing ground level, while the left hand end is 6.8m above the existing ground level. The required 2m side yard to both 148 Highcliff Road and 5 Bone Street has been provided.
- The significant point is that the height of the building does not exceed the permitted height of 9m. Other than the common boundary with the Fraser's property, only the right hand end on the south west elevation protrudes through the height plane angle by a maximum of 1m vertically and 3m horizontally. That protrusion is not considered to be significant in terms of environmental effects.
- The applicant accepts that the site coverage of 70% exceeds the permitted site coverage of 40%, that the minimum amenity open space for every unit has not been provided, that the separation between units need not be provided where the units are all joined, and that the 26 carparks may be less than what may be necessary for the combination of the lounge/kitchen and the 25 units.

8.5 All of the above are conditions that attach to the permitted activities in the Residential 1 zone and in terms of rule 8.7.4(i) would be considered as a restricted discretionary activity. As such, Council has restricted its discretion to the conditions which the activity fails to comply with. Internalising the environmental effects of the non-compliance with the permitted activity conditions is normally an acceptable outcome.

8.6 However, the more significant issue is the absence of the co-operative accommodation model in the district plan definitions. The studio student rooms are a similar concept where each resident is largely self-sufficient in terms of living, cooking, and ablutions, with or without a communal lounge. Abbyfield is another example of co-operative accommodation where up to 14 retirees usually in their 60's, 70's, and 80's and beyond live "like a big family". There is usually a housekeeper but residents must be in good health for no personal care is provided. The Hearings Committee consented to the co-operative housing development on the former High Street school site back in 2014.

8.7 This results in the proposal for 140 Highcliff Road having to be considered as a non-complying activity in terms of rule 8.7.6(iii) with either of the two thresholds in S104D having to be satisfied. Those thresholds involve either the adverse effects on the environment being minor or the activity not being contrary to the objectives and policies of both the operative and proposed district plans.

I wish to comment on the above in detail.

9 Firstly, the 25 units.

- 9.1 The applicant is confident that there is a demand for an alternative to the comprehensive aged care facilities such as provided at Ross Home, Summerset, Frances Hodgkins, Yvette Williams and Birchleigh in Mosgiel. All of these developments provide independent living for the aged along with on-site personal and hospital care. Most residents of these facilities have been assessed in terms of their individual needs and their ability to self-fund the resultant cost. The 25 units at 140 Highcliff Road will operate differently. Residents will be offered at an agreed sum, the right to occupy a particular unit and an associated carpark if required, together with access to the lounge. The property ownership will remain with the applicant who for a monthly fee, will attend to the grounds and building maintenance including the common areas. The right to occupy will include a refund of a percentage of the agreed sum on termination of the occupancy of the unit which would be renovated and offered for resale.

This form of accommodation is not the traditional suburban residential model.

10 Secondly, what is a residential unit?

- 10.1 The operative district plan defines a residential unit as:

"means a building or part of a building which is self-contained at least in respect to sleeping, cooking, dining, bathing, and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents. Staff living on the site are not included in this limit"

- 10.2 The applicant will have staff to manage the site, the lounge, and the 25 units, and arrangements will be in place to "provide" for requests from the residents. The staff will not live on the site. There is some doubt as to whether the proposal fits within the definition of a residential unit, hence the application uses the term "residential activity". The definition of residential activity refers to permanent and other styles of living accommodation, hence its use in the application.

- 10.3 But the world has moved on since the operative district plan was written in 1995 (and subsequently amended in 2000). There is no longer an expectation that everyone wants to live in isolation with all the attendant issues of property ownership, or the need for an assistance living arrangement. The proposal at 140 Highcliff Road fits within the new paradigm and is consistent with Council's Dunedin City Social Housing Strategy 2010-2020 which has as its vision

"access to suitable, adequate and affordable housing options" (executive summary)

- 10.4 The strategy predicts that the Dunedin population aged 65 and over will increase from 16,200 (2006) to 27,900 (2031) as will the one-person households 12,700 (2006) to 18,300 (2031)
- 10.5 The proposed district plan recognises these changes and widens the relevant definitions to include the concept of "supported living facilities" but does not quite go as far as to address what in essence, is a form of communal living such as proposed in this application and as consented for the co-housing development on the former High Street school site.
- 10.6 In essence, the proposal is for 25 individuals to have a small self-contained apartment with shared laundry and lounge facilities. It will not be suitable for everyone but for those wishing to avoid the responsibility of home ownership but in no need for personal care, the proposal at 140 Highcliff Road will be an option.

11 How does the opportunity measure up to the purpose of the RMA in S5?

- 11.1 There is only one purpose, that being "...to promote the sustainable management of natural and physical resources...". To achieve that purpose, resources are to be managed to "...enable(s) people and communities to provide for their social, economic, and cultural wellbeing...". Subject to internalising environmental effects, the proposal for 140 Highcliff Road is consistent with that purpose notwithstanding that the use requires consent as a non-complying activity in terms of S104D RMA.

12 Other issues raised in the recommending report and the associated staff memorandums

Point 1

Water and Waste, Transportation and MWH have identified specific solutions that can be achieved via conditions of consent.

Point 2

However, City Development (Peter Christos) cites the following matters of concern:

- Bulk and scale would be highly visible from Highcliff Road and surrounding properties.
- Lack of amenity open space
- Lack of meaningful landscape treatment

City Development seeks a reduction of the footprint to create additional outdoor amenity space.

12.1 *Our Comment on point 2*

The proposal seeks to maximise the number of units on the same level as the lounge. That sets the footprint of the building, with the ground levels and the need to provide carparking determining what happens below that prime floor level. Council accepts that outdoor amenity space is not sought by all residents (apartments within the CBD and the Warehouse district). The site at 140 Highcliff Road is not the normal suburban model that City Development is seeking.

The exterior to Highcliff Road can be modulated through its final design as suggested in the above sketch. Fencing and suitable planting is also intended.



Point 3

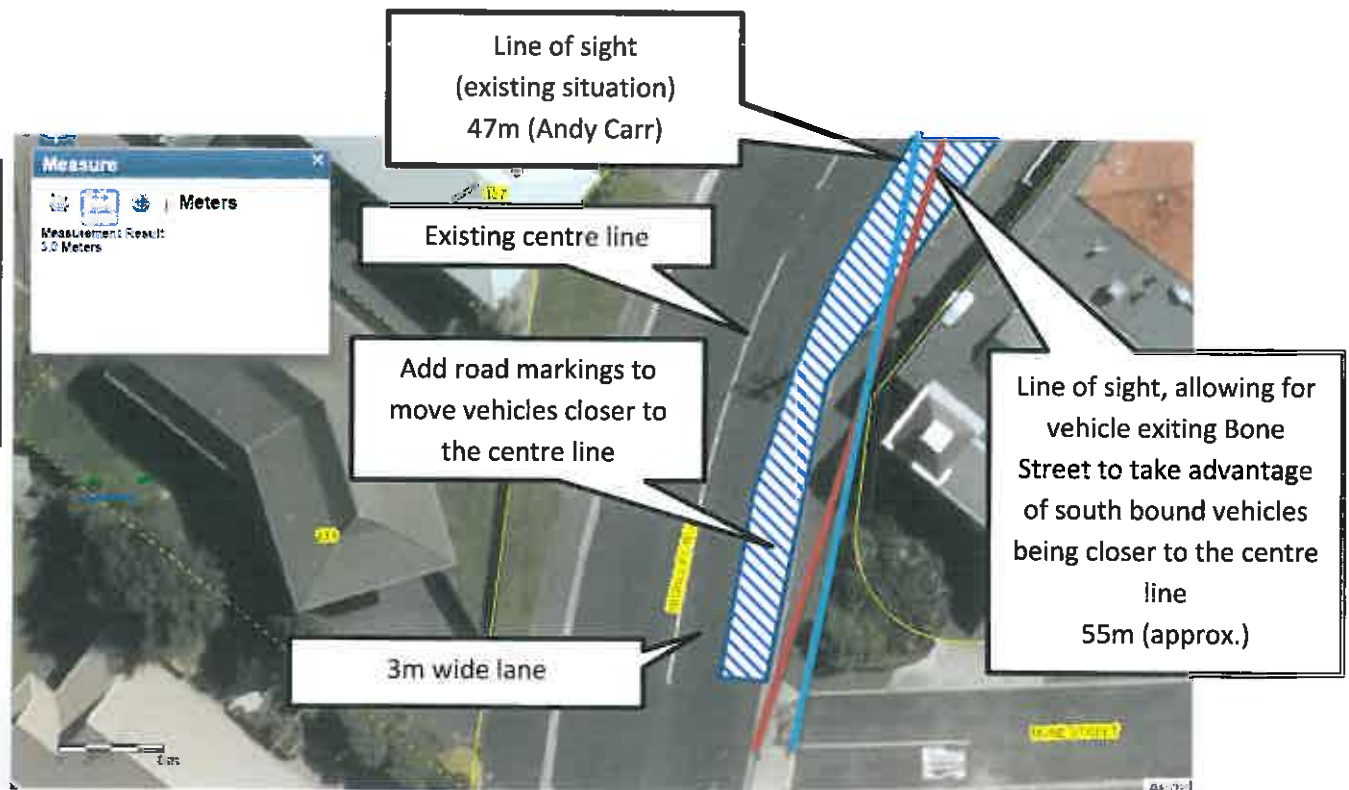
The planning recommendation to decline consent is made in the expectation that vehicle access from is not being retained from Highcliff Road ,the permitted activity standard front yard requirement is not being met, and permitted activity standard on-site outdoor amenity is not being meet. There is also reference to the existing building line restriction.

12.2 *Our Comment on point 3*

Vehicle access from Highcliff Road would effectively destroy the development because:

- It would occupy the frontage considered to be the most sought after for residents
- It would occupy too much of the available site area
- It would be steep and uncomfortable to use.

The project would not be viable if it is required to maintain vehicle access to the site from Highcliff Road.



There are positive measures that can be taken within the existing road reserve (Highcliff Road) to mitigate the existing issue with traffic exiting from Bone Street onto Highcliff Road as follow:

- The obvious first option is to manage the traffic flow down Highcliff Road so that it is within a 3.2m wide corridor adjacent to the existing centre line. This method of traffic management has already been adopted along Kaikorai Valley Road. It is a very effective method of channelizing the traffic flow and would create separation at the Bone Street intersection.
- The second option is for the erection of an actual speed display similar to the one coming down from the northern motorway towards the gardens.
- The third option is to install a speed camera to enforce the 50k speed limit.

Any or all of these options will enable a better outcome compared to refusing the consent that is sought.

To provide the 4.5m front yard to Highcliff Road is considered unnecessary in terms of both the history of buildings on the site and adjoining units, and would reduce the available depth of the development for no positive benefit. Both side yards of 2m comply, as does the majority of the 4.5m front yard to Bone Street. It is the corner of the end unit closest to Bone Street that intrudes a maximum of 1.5m into the required front yard, as does the final landing and fire escape stairs. The existing building containing the lounge was consented (LUC -201-49) and other than its partial demolition, it is to remain as is.

On-site amenity in the Residential 1 zone is a suburban housing model where each residential unit is to be provided with an area of 35m² containing a 4.5m diameter circle. The standard applies irrespective of whether the residential unit is a bedsit, a student flat or a 200m² dwelling. As noted above, non-compliance with a standard requires consent as a restricted discretionary activity. If consent is granted for the proposal, the future residents will have decided whether the proposal for access to a significant in-door communal amenity space is preferred to the private outdoor spaces required by the standard.

The planning report correctly identifies the building line restriction that was imposed in 1940. The building line restriction requires a building set back of 10.06m from the centre line of Bone Street which intrudes into the site by 4.06m. The southern corner of the proposed building and the fire escape are within the building line restriction: which will require that the applicant apply under the Local Government Act to uplift the restriction. The Local Government Act procedure is unable to be incorporated into the RMA consent process.

13 Issues raised in the submissions

- 13.1 There are a number of issues raised in the submissions, some of which have been adequately addressed in the memorandum from Water and Waste. We meet with Water and Waste and offered if considered necessary, to direct roof water directly to the kerb in Highcliff Road, and a portion of the waste water to be connected directly into the sewer in Highcliff Road. The units below the Highcliff Road sewer would require pumping and we would prefer not to be required to do that.

- 13.2 Equally, there is no expectation to park on either Bone Street which has only a 6m formation, or within the private entrances that provide access to 8 to 12 Bone Street. Carparking associated with the lounge will continue to use the kerb in Highcliff Road as been the situation for many years.
- 13.3 Shadow diagrams of the proposal show that effectively from September to March, only 5 Bone Street (Mr and Mrs Frazer) will be significantly affected. The Frazers have been consulted and arrangements are in place. In late September to March, the properties at 148 Highcliff Road and 8 Bone Street will be affected by shadow from about 4pm. However, the shadow would be generated by the part of the building that complies with the operative district plan height limit, the yard limit, and the height limit. In other words, a complying building at the critical points.
- 13.4 From April to August, the lower angle of the sun creates quite a different pattern of shadow. The existing lounge already creates a shadow over 136 Highcliff Road (Mr Beck/Ms West) and from noon until sunset at 3pm, the new building creates a shadow over 4 Bone Street (Mr and Mrs Reynolds) and 6 Bone Street (Ms Currie). As explained above, while the new building complies with the maximum height and yard requirements, the south east corner exceeds the height plan angle. This results in some increase in the permitted shadow. The scale of the increased shadow at 3pm in mid-winter is insignificant.
- 13.5 Privacy is cited as concern. The lounge has been operating from the site since the major alteration and extension in 1975. There is no proposal to alter the foot print of the lounge. There are only 4 sets of windows facing north east facing the Forlongs' property at 148 Highcliff Road and a similar number set back 30m from the Bone Street frontage.
- 13.6 Noise from the continued use of the lounge is unlikely to be an issue, and the right to occupy agreements will have an expectation for residents that do not exist for private homes. It is import to stress that 140 Highcliff Road will be the permanent home of the residents who in terms of the purpose of the RMA are equally entitled to respect.
- 14 S104D and Part 2 assessment**
- 14.1 There is obviously a difference in emphasis between my AEE and the planning report as to the significance of the environmental effects beyond the site. I believe that the key question relates to the proposed land use involving the reduction in the size of the licenced premise plus the use of the balance of the site by the 25 residents who will be able to utilize the lounge facilities. Compared to both the tavern use of the site or the baseline of the permitted 3 dwellings, the environmental effects of the proposed land use will not be all that significant. The existing pedestrian access to the lounge will remain direct from Highcliff Road, and the residents will most likely come and go by vehicle direct from the basement car park. By any reasonable assessment, the scale of the change in environmental effects in the land use of the site must be no more than minor.
- 14.2 The environmental effects beyond the site arising from the non-compliance with the permitted activity standards requires an assessment against the specific matters in clause 8.13 of the district plan and a decision made on each of the matters. We cannot realistically increase the front yard to Highcliff Road, nor can we maintain the existing vehicle access from Highcliff Road. We can offer to soften the visual impact of the elevation to Highcliff Road by the careful choice of the materials.
- 14.3 Within the site, it is the topography and the need for car parking that has determined the form of the development. Its scale is not excessive compared to Frances Hodgkins Retirement Home in St Clair and the like, but it probably does exceed the expectations of the permitted base line of 3 dwellings. The environmental effects within the site will be of interest to the residents who will ultimately decide whether or not the proposal proceeds. This is consistent with the purpose of the RMA (S5 RMA) which to enable people to provide for their wellbeing.
- 14.4 In terms of the wording of the objectives and policies in both district plans, they are supportive of certin outcomes, rather than being directive. The Courts have often said that there cannot be a expectation that a non-complying activity will find positive support from any specific objective and/or policy. What is critical, is that the proposal is not repugnant (contradictory/incompatible) to such outcomes. Both the planning report and I agree that the proposal passes that test.
- 14.5 Given the above (S104D RMA test), the wider considerations under S104 RMA can be summarised as follows:
- The proposal will **enable** the ongoing operation of the social facility that has served the area for many years.
 - The proposal will **enable** 25 residents to have appropriate accommodation
 - Transportation can provide road markings to improve visibility at the Bone Street/Highcliff Road intersection
 - The applicant can "tidy up" the exterior of the building so that it integrates into the visual frame work from both public and private viewing positions
 - The applicant can complete the arrangements with Mr and Mrs Fraser.

15 Conditions of Consent

The planning report usefully attaches as Appendix 3E draft conditions of consent. All are accepted save for the following:

- Transportation condition 4

Residents with a vehicle will expect to have an allocated carpark.

- Liquor Licensing

This is a matter that must follow its own procedures. The RMA issue is that the lounge has been licensed and as such, has been consented (LUC-2010-49)

The advice notes are acknowledged and will be followed.

Planning Evidence of Don Anderson

T/A

Anderson&Co

For

Shiel Hill Properties Ltd

Resource Consent Application

LUC-2015-345

140 Highcliff Road, Dunedin

16 March 2016

Statement of Ezra Eini

Hello, my name is Ezra Eini, and I am a co-owner of 140 Highcliff Road.

I would like to briefly cover 3 points today:

- First, a bit about me
- then a summary of facts that support the proposal
- and to conclude a summary my vision for the property

A bit about me. My family and I moved to Dunedin a number of years ago and we now call Dunedin home. I have previously been involved in residential developments and my aim with 140 Highcliff Road is to do the right thing! To do something that will serve the local community for many years to come.

A summary of the facts that support the proposal:

- Dunedin has an aging population.
- There is little suitable accommodation in the Waverly and upper Andersons Bay area for the local elderly. The residential area surrounding the site is hill suburbs characterised with low density suburban residential living.
- Around the site there are few places for community social interaction.
- 140 Highcliff Road is in a nice location and has beautiful views.

I have a vision to enhance 140 Highcliff Road into a real community asset – one that caters for the areas aging population by offering suitable accommodation within their community, while also providing a place for the wider community to meet and interact.

The vision is to do something good for the community and to do it right and nice.

Reopening the public bar with accommodation would not do justice to the site. The previous operations would have generated much more noise and traffic movements than what is being proposed.

Our vision includes:

1. Views which future residents can enjoy all day.
2. The addition of a Club Room will provide for the opportunity for social interaction of residents, while also being accessible to the wider community.

The community can have confidence in the proposal, as prior to purchasing the site we completed our own investigation of the site, and I have been involved in a number a successful projects including the reuse of sites and commercial residential developments.

Finally, we have discussed the proposal with the owner of 5 Bone Street, who is see the benefits of our proposal, and we have an arrangement in principle with them to purchase their property if consent is granted for the proposal of 140 Highcliff Road.

Ezra Eini

Co-owner of 140 Highcliff Road