

Report

TO: Hearings Committee

FROM: Melissa Shipman, Planner

DATE: 16 October 2016

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2016-129
138 UNION STREET
GARY TODD ARCHITECTURE

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 16 October 2016. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in report below, I consider that the proposal has effects that are no more than minor subject to conditions. As a result, I have concluded that the proposal should be granted.

DESCRIPTION OF PROPOSAL

- [3] Resource consent is sought to establish a new three storey mixed commercial/residential building to replace the existing single storey commercial building. The building varies in height between 7m and a maximum of 8.5m high. The commercial use at ground floor will continue to cater for the existing Café and Dairy as well as ground floor access for two apartments above. Each apartment provides first and second floor level living around a central stairwell. Service courtyards are proposed at ground level for the café/dairy and elevated outdoor amenity spaces are proposed at second floor level for the apartments. New verandahs are proposed at ground floor level to replace the continuous verandah at the corner of Union Street East and Forth Street. A common bike storage area is proposed at ground floor level as no on-site car parking is provided. The proposed footprint of the development occupies 97% of the site area.
- [4] As an intentional design response to the nearby multi-storey buildings the proposed building adjoins the street boundary on both road frontages, although only up to first floor level with steel frame grid design framing the remainder of the space up to second floor level.
- [5] The Applicant originally proposed a combination of neutral and vibrant colours to compliment the building and surrounding buildings. Exterior materials are to include a Membrane Roof (grey), anodised aluminium joinery (black), steelwork (black), tile cladding (mix of various colours) and paving using exposed aggregate concrete (grey).

- [6] The proposal includes the storage of four 45kg gas cylinders in the side yard of the property. Two in association with the café and two in association with the dairy. The Applicant has indicated that the two units above will have hot water cylinders which will be located within space identified as laundry.
- [7] The proposal involves the demolition and removal of the existing concrete floor and foundations followed by excavation and fill associated with preparing the ground for a new concrete floor and foundations. The Applicant indicates that no part of the building will be below that of the existing therefore earthworks will be less than 100m³. The Applicant has indicated that 4m³ is required to be excavated for the stormwater tank to be established on the site. This will require a temporary cut of up to 2m deep and will be backfilled resulting in no change in ground level. The stormwater tank is to be located approximately 1.3m back from the boundary.
- [8] Post notification, the Council received final revised plans changing the layout of gas cylinders in the side yard of the property and creating new recessed entrance ways into the commercial premises for a greater boutique style effect at ground floor level. The colour of the tile cladding has been amended from a mix of various colours to a more neutral palette. The effect of the changes are largely internalised within the development and therefore, it was not considered necessary to extend the notification period.
- [9] The Applicant has noted that they will be obtaining an archaeological authority due to the location of the site being on a past Otago Harbour Shoreline and activities that occurred in that area.
- [10] A copy of the application, including revised plans of the proposed development, is contained in **Appendix 1** of this report.

DESCRIPTION OF SITE AND LOCATION

- [11] The subject site is located on the corner of Union Street East and Forth Street at 138 Union Street East. The subject site currently contains a retail convenience store and café at ground level. The existing single storey shop/café occupies the entire site and also has a canopy over the footpath for the entire Union Street frontage and Forth Street frontage, with the exception of the corner section across the corner of Forth and Union Street East.
- [12] The surrounding environment comprises of a mix of two six storey high buildings. Two storey buildings adjoin the site to the immediate north and west of the site and generally buildings of that height extend along Union Street and Forth Street on the same side of the road as the subject site. A six storey tertiary building is located opposite the site on Forth Street (to the east), and a four storey Polytech executive residence building is located opposite the site on Union Street East, which fronts onto Union Street East and extends to Leith Bank Street. A three storey high Polytech campus building ('Owhio') is located diagonally opposite the site at the corner of Union Street East and Forth Street. The six storey high building has a small strip of green space fronting onto Forth Street and the three storey high building has a small corner of planting at the intersection of Forth and Union Street. The four storey high executive residence building is located amongst a highly vegetated boundary with some open space surrounding.
- [13] Both Union Street and Forth Street provide a combination of timed angled and parallel parking on both sides of the street with the exception of the five minute parallel parking areas provided immediately outside the subject site on Union Street East (which extends along the boundary of the site to 118 Union Street East) and on Forth Street (extending to the 74 Forth Street property). Some public amenities are provided within the pedestrian walkway outside the

property including rubbish bins, lighting poles, public letterboxes and Telecom Phone Booth.

- [14] The site is legally described as Part Section 50 Block XXXVI Town of Dunedin held in Computer Freehold Register OT75/5. The site has a total area of 216m² more or less.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [15] The current building was established in 1968 as two shops. Council's records indicate that a shop has occupied the corner site since 1893. Prior to that, it was primarily occupied by houses, and a stable before that.
- [16] The existing shop alterations and café have been authorised by land use consents RMA-2000-0734(RMA-2000-364369) and RMA 2004-1137 (RMA-2004-368541). RMA-2000-0734 granted non-notified consent to establish a coffee takeaway busies associated with the existing commercial activity (Campus Wonderland Dairy Store). As part of that consent the Applicant obtained consent to place tables and chairs and a sandwich board sign on the footpath adjacent to the site.
- [17] Commercial activity on the footpath in association with the café was approved on 12 April 2005 and renewed almost annually thereafter, the latest renewal being 4 September 2013 allowing for 3 tables (2 chairs per table). The café was sold to the current owners in April 2014 and the commercial use application changed to approval of one bench seat outside the premises (Permit No. 884) which expired on 30 June 2015. No renewal has been sought. It is unclear whether the Applicant seeks to continue this activity, however, it is noted that a possible continuation of the activity could be considered in any assessment of the continued café operation.
- [18] On 6 April 2016, the Applicant lodged a resource consent application for an alternative building design to the proposed design, also retaining commercial at ground floor and a two unit residential development above. That application was superseded by the current application which was lodged on 8 July 2016. The Applicant changed the design of the building to a rectangular form rather than the former tilted façade on the northern elevation that was necessary to comply with the height plane angles on this site. The key difference is an increase in the degree of compliance with the height plane angle.
- [19] Revised plans were again submitted on 10 October 2016, however, this time with only minor changes to the exterior tile cladding and to the shop entranceways. The revised plans are attached as **Appendix 1B** to this report.
- [20] A HAIL Property search completed in April 2016 revealed no record of a HAIL activity on the site (HAIL-2016-9).

ACTIVITY STATUS

Dunedin City District Plan

- [21] The subject site is zoned **Residential 3** in the Dunedin City District Plan. The site is annotated in Councils Hazard Layer as being prone to **Seismic Hazards: Intensified Shaking and Liquefaction and a Flood Hazard: Waterway**. Union Street East and Forth Street are both classified as **Collector Roads** in the Plan's Roading Hierarchy.
- [22] Resource consent is required as the proposal includes a continuation of commercial activities at ground floor level and commercial activities are not

provided for within the Residential 3 Zone rules. Therefore, Rule 8.9.6(iii) applies and resource consent for a non-complying activity is required.

- [23] Rule 8.9.1(i) permits residential activity at a density of not less than 45^m² of site area per habitable room on an existing site of any size. The subject site has a total area of 216m² more or less and therefore a density of 4 (4.8) habitable rooms could be established. The residential component of the proposal breaches the density requirements of the Residential 3 zone by (2) (1.2) rooms. The proposal falls short of the density requirement by 54^m².
- [24] 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 suitability of the proposed activity. The proposal fails to meet the following Residential 3 Zone rules for permitted activities:
- [25] Rule 8.9.2(i) which requires a minimum front yard set-back of 3m. No front yard set-backs are proposed. The proposed canopies encroach over the front boundaries into road reserve. The existing single storey building breaches the front yard set-back and also has a canopy encroachment over the front boundary.
- [26] Rule 8.9.2 (ii) which requires a 1m side yard set-back. The proposed building is to be built up to the side boundaries. The existing single storey building is built to the side boundary.
- [27] Rule 8.9.2(ii)(b)&(c) which requires any building to comply with a Height Plane Angle to the side boundaries of 45° (1 to 1 yard to height ratio) originating from an elevation of 3 m on the boundary line. The proposal breaches the height plane angle to both 74 Forth Street and 118 Union Street East. Approximately 600mm of the existing shop building penetrates this height plane envelope to the side boundaries.
- [28] Rule 8.9.2 (ii) (iv) sets out a Maximum Site Coverage: (b) On all other sites 50% of site area. The proposal is for 97% site coverage. The existing building has 100% site coverage.
- [29] Rule 8.9.2 (v) sets out a Minimum Amenity Open Space: (a) Every residential unit shall provide at ground level an area of amenity open space that is readily accessible from a living area, physically separated from any car parking areas by a fence, wall or a 1.5 m wide landscaping strip and with a minimum area and dimensions calculated as follows:
- (i) For a residential unit with up to and including 4 habitable rooms: 30 ^m² and capable of containing a 3.0 m diameter circle.
- [30] Rule 8.9.2 (ii) Areas of Amenity Open Space In the case where a residential unit is not situated on the ground floor:
- (a) Balconies may be used to offset the required amenity open space areas for residential units and commercial residential activities above ground floor level at a rate of 1 ^m² of balcony area for 1 ^m² of amenity open space.
- (b) Where balconies are provided to meet this requirement, they must:
- Be provided on the same level as the residential unit to which they relate and be directly accessible from a living area.
- Be capable of containing a 2.0 m diameter circle.

The proposal provides two open deck areas at $3.7\text{m} \times 7.6\text{m} = 28.12\text{m}^2$. The proposal breaches this rule by approximately 1.88m^2 for each unit. The plans indicate that it meets the 30m^2 requirements but technically, when the measurement is taken from the inside of the wall face, the amenity open space requirements for amenity open space are not met.

[31] Rule 8.9.2 (vii) Outdoor Service Area

(a) Every residential unit shall provide an outdoor service area in addition to amenity open space requirements that is screened from the view of adjoining sites and any road, with a minimum area of 6 m^2 and capable of containing a 1.5 m diameter circle.

(b) For multi-unit developments the outdoor service area may be combined at a ratio of 4 m^2 per residential unit.

The plan indicates compliance with the 1.5m circle and the area, although it is not clear how this interacts with the outdoor access requirements. Despite this, it appears that the proposed service area is large enough to provide for both the residential and commercial components of the proposal.

[32] Rule 8.9.2 (c) Access

Outdoor access to any open area to the rear of a residential unit is to be provided with a minimum width of 1m.

There are no details of the proposed bike storage area. It is possible that the bike storage area could impede the outdoor access. However, the Applicant has verbally indicated that there are a number of lockable wall devices which allow for good walls storage of bikes within the outside area or even within the units or stairwells themselves.

[33] Rule 8.9.2(viii) Minimum Car Parking [On-site car parking shall comply with the performance standards in Section 20 (Transportation) and shall be provided on the following basis:

(a) Residential Activity

(i) 1 car park per residential unit up to and including 4 habitable rooms.

There are no onsite parks provided. The residential component of the activity breaches this rule by 2 on-site car parks.

[34] Rule 8.9.2(x) signs permitted in the Residential 3 Zone are only those in association with permitted residential and commercial residential activities.

Any signs associated with the proposed commercial development are considered non-complying.

[35] The proposal is not considered to breach any of the earthworks provisions in the Plan, the volume of earthworks is less than 100m^3 , being 96m^3 for the excavation and 4m^3 for the stormwater tank. Further, the reinstatement of the existing retaining wall is considered to fall within the existing use rights provisions under the Resource Management Act 1991. It is understood that the design of the wall will be subject to detailed design as part of any building consent.

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

- [36] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as **Inner City Residential**. The maps also indicate that the property is within the **Hazard 3 – Flood Overlay Zone**. The site is also identified as being within an **Archaeological Alert Layer Mapped Area**.
- [37] Section 88A of the Resource Management Act determines that when an application has been lodged prior to notification, the activity status remains unaltered despite a proposed plan being notified. Accordingly, the activity status of the application discussed above remains unaltered.
- [38] 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.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

- [39] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.
- [40] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As such, the National Environmental Standard is not applicable to the proposal.

Summary Activity Status

- [41] Overall the application is considered to be a **non-complying activity** in accordance with the Operative District Plan.

NOTIFICATION AND SUBMISSIONS

- [42] No written approvals were submitted with the application.
- [43] 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.
- [44] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties at 74 Forth Street and 118 Union Street East. They were considered to be affected more than the public generally due to the cumulative effect of the increased density, height plane angle and site coverage breaches which may result in adverse dominance effects and potentially impact on the adjoining resident's privacy.
- [45] The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 8 September 2016.

- [46] Copies of the application were sent to the following parties with submissions closing on 5 October 2016:

- J L Kinraid, 2A Alton Avenue, Dunedin 9013
- S C Choie and A X Choie, 8 Fairfax Street

- [47] No submissions were received in support of the proposal. One submission was received opposing the proposal. Details of the submission received are summarised in the table below, and a full copy of the submission is attached in **Appendix 2**.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
She Chun Choie	Oppose	▪ The development will have a serious impact on light and air flow. ▪ The 2.6m wall on the boundary will impact on their residential property at 74 Forth Street. ▪ The shading effect resulting from the height of the proposed building will impact on their residential property at 74 Forth. ▪ Reduced light will impact adversely on privacy, shading, and reduced airflow creating a damp environment and health implications for residents. ▪ Maximising return on a commercial site with residential accommodation above should not be permitted at the expense of adjoining residential use.	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [48] 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.

Permitted Baseline

- [49] 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.

- [50] Existing lawfully established activities on the site relying on existing use rights form part of the existing environment. The building and its location and coverage across the site enjoy existing use rights as does the level of signage currently displayed on the premises. A relatively new looking flag sign attached to the dairy on the Union Street façade would be excluded from existing use rights consideration.
- [51] The commercial use of the building and the site forms part of the consented baseline comprises of the existing commercial use of the ground floor of the site across 100% site coverage.
- [52] The permitted baseline also allows consideration of the removal of the commercial use on the site and the establishment of a permitted multi-level residential development of up to 9m in height on the site subject to compliance with the bulk and location controls applying to the Residential 3 Zone.
- [53] An above ground level 2m high fence could also be erected on the boundary of the site.
- [54] It is considered appropriate to apply the permitted baseline in any assessment of this application.

Assessment of Effects

Dunedin City District Plan

- [55] The assessment of effects is guided by the assessment matters in Sections 8.13 (Residential) and 20.6 (Transportation) of the District Plan. Accordingly, assessment is made of the following effects of the proposal:
 - Sustainability;
 - Bulk, Location, Design, Appearance and Amenity Values;
 - Noise Effects;
 - Signage;
 - Transportation;
 - Infrastructure;
 - Hazards;
 - Archaeological/Cultural Effects
 - Positive Effects;
 - Cumulative Effects.

Sustainability

- [56] The proposal is consistent with the objectives and policies of the Sustainability section of the District Plan. These seek to maintain or enhance the amenity values of the City and to provide for development at an appropriate density to allow the sustainable management of the infrastructure. While the density exceeds that which might be normally allowed for on the site, the overall development has demonstrated that it can mitigate the effects of any extra demand on the Council's infrastructure – this is outlined in more detail below. The development improves the overall appearance of the site and integrates well in the context of a mixed use multi-storey environment. The potential for adverse effects on the existing amenity values of the area is discussed in more detail below.

Bulk, Location, Design and Appearance and Amenity and Character Values

Bulk, Location, Design

- [57] The application was forwarded to the Council's Urban Designer, Mr Christos for comment. Mr Christos notes that the site is not located within any precinct but is prominent and integral to the adjoining campus streetscape. Reflecting on the current site development, Mr Christos notes that 'other buildings sit much taller on the intersection (of Union and Forth Streets) – the diminutive scale of 138 Union Street does not define the intersection or corner well'. Mr Christos considers that the proposed height and bulk will be more consistent with the existing streetscape and will be a reasonable fit with neighbouring residential buildings. Importantly, Mr Christos notes that the ground level change between 138 Union and 74 Forth Street allows for additional height and as a result finished roof levels will be similar to existing neighbouring buildings.
- [58] *116-118 Forth Street:* Mr Christos considers the proposed building will have minimal negative effects on 116-118 Forth Street (directly to the west), noting that the development on that site runs north/south with only a small area of the east façade (near the Forth Street Boundary) facing the new development. That part of the building has a balcony extending off the building at first floor leaving and several windows on the eastern elevation. The balcony will be at a similar level to a proposed balcony on the proposed development. The owner of the property at 116-118 Union Street East has not lodged a submission opposing the development. The development is well recessed from that boundary above ground floor level. At first floor level the bedrooms adjoining 116-118 Union Street East are 2.5m off the boundary. At second floor level, with the exception of the steel framed outdoor space, the bulk of the building is setback, 6.0m from that boundary. Given the steel framed structures frame the space without adding additional bulk to the building, the effect of the height plane infringement on this elevation is considered to be no more than minor. A small section of the building below the open steel frame also encroaches the height plane however, this additional bulk, at 2.5m separation is not considered to create any dominance or adverse visual effect for the western adjoining property nor can it cast a shadow on the adjoining properties given its location to the south of those buildings.
- [59] When considering the proposed outdoor space areas on top of the ground floor roof, Mr Christos notes the purpose of these as being to maintain a strong rectilinear envelope and that the open nature of this helps to mitigate some of the effects of the height plane breach while being visually compatible with surrounding architecture.
- [60] *74 Forth Street:* When considering the effect of the proposal on 74 Forth Street, the effect of a complying 9m high three storey residential building must be considered. The placement of multiple windows could occur at closer proximity to the Applicant's boundary under a permitted development of the site – this sets a baseline consideration for the impact on the privacy of the residents of 74 Forth Street. The proposed design provides a continuation of commercial at ground floor level which is unchanged from the existing scenario. At first floor level, bedrooms are located at first floor level, 2.5m setback from the boundary. 74 Forth Street has bedrooms at ground floor and first floor level which will look into those bedrooms. The impact of bedrooms adjoining bedrooms can be mitigated by curtains which are generally pulled for sleeping. At second floor level, the proposed building has kitchen/dining areas which overlook the first floor bedroom windows at first floor level at 74 Forth Street. The impact of a living area overlooking bedrooms is considered to be greater than a bedroom looking into a bedroom, however, is still able to be mitigated by curtains in a bedroom.

- [61] The building is not built up to the maximum 9m height level but at 2.5m setback, a 1.5m section of the second floor building encroaches into the height plane across the length of the building along the top edge. That part of the building. While the building length is elongated to 15m by the steel post frame structure, this structure is relatively open. Therefore, the main bulk of the building which protrudes is an 11 metre section containing the kitchen/dining/living areas for the two proposed apartments. The building has the potential for greater bulk in terms of its width across the site and its height. However, the proposed design for amenity open space at second floor level reduces the bulk of the building allowing a greater level of natural light to the units at 74 Forth Street when compared to a complying building.
- [62] The submission received from the owner of 74 Forth Street raises concerns about the impact on light and shading, and a potential reduction in air flow. For the reasons above, the impact on 74 Forth Street occupants is considered to be no more than minor. The shading effect resulting from the encroachment is not illustrated by the Applicant, however, due to the location of the proposed development to the south of the adjoining residential properties, including 74 Forth Street, any shading effect of the proposed development will be negligible. It is possible that any reduction in privacy associated with the proposed development could be further mitigated by louvered shutters over communal areas or along the northern elevation of any outdoor amenity space, however, given the effects (taking into consideration the effect of a permitted development) are considered to be no more than minor
- [63] It is also possible that a re-design of the encroaching area with an angled profile would remove that infringement altogether, without modifying the internal layout of the building. However, this modification is not considered necessary because it would not have the effect of reducing any adverse effects, only adversely affecting the overall design.
- [64] The submitter raises concerns about a 2.6m high wall to be constructed on the boundary adjoining 74 Forth Street. The wall is located below the ground level of 74 Forth Street and is a replacement wall for an existing higher retaining wall that is already located on that boundary. The existing wall has existing use rights and when considered as a standalone matter, there is no increase in adverse effects. The Applicant has confirmed that the proposed development will be constructed at the same ground level as the previous development, with the exception of a stormwater tank that will be 2.0m deep into the ground, approximately 1.3m off the boundary.
- [65] The submitter also raises concerns about the inclusion of residential above and states that the commercial use of the adjoining site gave them confidence that their access to light and air would remain unimpeded. Mr Christos responds to the submitter's expectations with regard to access to light and air and considers that a complying development could have, at least, similar effects' (with only a 1m side yard setback required). Mr Christos also notes that *'a south facing façade in a built up area is likely to have limited solar access in most instances'*.

Residential Amenity

- [66] The proposal provides for two three bedroomed two level apartments above ground floor. The Applicant confirms that tenancy agreements will only allow three residents per apartment. I consider the increased density acceptable on this site, in this location, where a higher density of both residential and non-residential activities is apparent, for example, in the immediate vicinity there are several multi-storey buildings from two to six storeys high.

- [67] The commercial use at ground floor is already established on the site and the effects of that use are unchanged by the proposal, with the exception of an altered shop entrance design and the inclusion of a new entranceway for the apartments on Union Street which effectively reduces the footprint of the dairy slightly. The new shop entrance designs provide a more 'boutique' style entrance to the development, rather than a sliding door immediately onto the pedestrian walkway. This is considered to provide a more acceptable design with the inclusion of residential activities above.
- [68] The modern verandahs provide a more streamlined and enhanced appearance to the existing verandahs which differ in size between the Union Street and Forth Street facades and are located at differing heights. The development does not bring the verandah across the area where the two facades meet, however, continuous verandah cover is not a requirement of the plan in this location. It is anticipated that any signage will also be more amendable to the inclusion of residential within the development.
- [69] The northern and western elevations have a high volume of glass as a wall cladding at second floor level in particular. The potential for light spill onto adjoining residential properties can be mitigated by the type of glass used and lighting methods within the building. While a development that complies with the bulk and location controls might have a similar volume of glass, it is requested that the Applicant give further consideration to this matter, so that any potential night time disruption to residents is minimised.
- [70] The revised colour palette for the exterior tile cladding to a more neutral colour allows the development to better integrate into its environment residential environment and the colour palette of non-residential buildings surrounding the site, however, it should be noted that building colour is not controlled within this zone.
- [71] The amenity open space provisions on the site are considered to be adequate. While they are solely provided at first floor level they are of a high quality and overlooking the street with open views. The spaces are directly accessible off the main living area for both units. The site is also in close proximity of other parks and open spaces being close to the harbour and the Botanic Gardens, as well as university sports complexes. The urban edge provided by the 6 storey university building opposite the site on Forth Street provides a planted border with seating for the public which can also be enjoyed by the residents.
- [72] There will be some disruption to the amenity of residents on adjoining sites due to the construction of the development and the removal of local services currently provided by the dairy/food outlets. However, these effects are short term effects occurring over a limited duration. Construction will be limited to normal working hours.
- [73] Overall, I concur with the Applicant that the development will provide a higher standard of residential accommodation adding diversity to the type of accommodation available within the neighbourhood. The mixed use nature of the development provides a continuation of the existing commercial environment at ground floor while better utilising the space above for residential rather than additional commercial floor space.

Noise

- [74] The Environmental Health Officer highlights that the mixed commercial/residential nature of the proposal can result in some environmental effects impacting future residents of the building. These effects would be particularly around noise generated by refrigeration and extraction systems as well as cooking odour. The Applicant response in relation to the

revised design is that the mechanical plant will be positioned on level 1 under the concrete roof in the service court. The Applicant considers that this location will mitigate effects in terms of noise and visual effects from any nearby properties. The Applicant has also indicated that the extract system will vent above the top level of roof central. Given the intensity of commercial use is not increasing on the site it is considered that any venting of the normal fumes associated with the addition of two residential units will not result in additional noise that would have a minor effect.

- [75] The residual noise associated with the comings and goings of staff and customers to and from the dairy and the restaurant provide a baseline of movements and noise around this property. The additional movements associated with two three bedroom apartments will be unnoticeable within the context of this environment. The use of outdoor spaces at first floor level may result in a higher level of outdoor noise, however, the noise is associated with residential living which is a permitted activity within this zone, and when considering the permitted baseline, a complying building with similar outdoor areas would create the same/similar volume of noise.
- [76] Also mitigating any noise effects associated with the service related activities of the site is the extension of the ground floor level roof to the boundary over the service yard areas. I concur with Mr Christos that this (combined with the ground level retaining wall extending along those boundaries) has the effect of reducing negative views at the west and north boundaries and will reduce noise close to these boundaries.

Signage

- [77] With the exception of a relatively new flag sign on the Union Street façade, the existing signage has existing use rights in association with the dairy and the 'Fluid Espresso' café. The application does not detail any signage in association with the new commercial activities at ground floor, however, it is anticipated that some signage will be required, although it is likely not at the level that is currently exhibited for the dairy. Given the high level of glass within the façade design, and the narrower parapet on the verandah it is possible that hanging signage perpendicular to the building is proposed under the verandah. It is also possible that the new stepped entranceways are where signage will be displayed. A blank wall on the Union Street façade has no signage but it could be anticipated that some signage may be required at that location. A separate application for resource consent will be required if the Applicant fails to provide any further detail on this matter. Given that a high volume of signage at ground floor level has existed on the site for a considerable time without review, it is likely that an improved signage scheme will provide a reduced amount of signage clutter.
- [78] If the Panel is minded to grant consent, a condition of consent is recommended which would require the details of the signage for the building to be submitted and approved by the Resource Consents Manager prior to erection (see **Appendix 5**).

Transportation

- [79] The application was forwarded to the Transport Officer for comment. The Officer notes that each of the two residential units requires a single on-site parking space within this Zone. No residential car parks are provided on the sit therefore the proposal has a shortfall of two car parks.
- [80] The Applicant has noted that the provision of two vehicle crossing widths to provide on-site parking would remove at least two kerbside parking spaces. They consider this would be detrimental to the overall effectiveness of the

existing public parking arrangements for the range of land use activities in the vicinity of the site. While timed angled and parallel parking and five minute car parking is provided outside the site currently, the Transport Officer accepts that the establishment of vehicle accesses into the site (in close proximity to the intersection) may diminish the level of service (safety and efficiency) of footpaths adjacent to the site, which anecdotally experience significant pedestrian demand due to tertiary education activities near the site. The Officer acknowledges the proximity to the campus area and the alternative transport options available in the area which provides access to the wider city. The Applicants offer of dedicated covered/secure bicycle storage facilities within the site also encourages alternative transport modes. Transport considers that the proposed parking shortfall is acceptable in this instance, since requiring on-site parking would be somewhat onerous and would not provide an overall parking improvement for residents and the public alike.

- [81] I concur with the Transport Officer that the proximity of the site and the purpose built nature of the accommodation for students studying in the Campus area negates the effect that a deficiency in car parking might normally create in a residential environment.
- [82] The Transport Officer has not provided comment on the height or extent of the proposed verandah however, it is noted that they are slightly lower than the previous verandah and do not extend as far out to the kerb as they currently do. If the Panel is minded to grant consent, a condition of consent is recommended requiring the design to be reviewed and approved by the Planning Manager to ensure that the verandah design reflects recent traffic and pedestrian safety design parameters, for example, head height, setback from footpath and clearance from turning traffic around the corner of Forth and Union Street so as not to impede traffic.

Provision for Stormwater, Water and Sewerage

- [83] The design of the building and its ability to offset any potential/perceived greater load on Council amenities and waste services is detailed in the application. In order to address the site coverage, the Applicant proposes a large rainwater storage tank below the service court to regulate stormwater into council systems during events of above usual rainfall. For wastewater disposal, the Applicant proposes all fittings and appliances will be the highest grade for water saving available. All clothes washing machines, dishwashers, lavatories and taps will have a 6 star WELS rating for water efficiency. All shower heads are to be low-flow shower heads and to have a 3 star WELS rating (maximum in NZ). All taps are to be fitted with aerators.
- [84] The application was forwarded to the Water and Waste Services Team for consideration of the over dense residential proposal. The Consents and Compliance Officer is satisfied that these measures will mitigate any adverse effects of additional stormwater run-off resulting from the high site coverage.
- [85] The Officer also notes that two separate water connections are required to service the residential activity, (one existing and one new connection for the two units), with a new requirement for a water meter (for residential) and backflow prevention device to be assessed at the water application stage. The Trade Waste connection is already metered. The water saving devices are accepted as assist in reducing water consumption and the average volume of wastewater being disposed of from the development.
- [86] With regard to stormwater, the Officer acknowledges the rainwater tank as easing the pressure on the Council stormwater system, with details of the stormwater retention system to be finalised during the building consent stage. The Plan outlines the pressure that this area is under as a result of the original

housing resource being greatly diminished and the considerable additions to buildings as well as redevelopment of sides with large areas of open space, thereby increasing the overall density of development in the zone.

- [87] The Officer notes the existence of fire hydrants within complying distances from the development which would satisfy the SNZPAS Fire Service Code of Practice for Fire Fighting Water Supplies.
- [88] With regard to trade waste, the Officer notes the current trade waste consent for the existing commercial activity.
- [89] The Consents and Compliance Officer supports the proposal subject to conditions. The conditions are set out later in this report or inclusion in a decision certificate if the Committee is minded to grant consent.

Archaeological Effects

- [90] There is the potential for items of value to be discovered during the demolishing and removing of the existing concrete floor and foundations. While the site is not classified in the District Plan as being an archaeological site, the Applicant acknowledges the maritime history of the site and surrounds. Heritage New Zealand has indicated that the Applicant has applied for an archaeological authority for the project which is being processed at the time of writing this report. Heritage New Zealand have requested that an advice note recommend that subsurface works not commence until an archaeological authority has been obtained from Heritage New Zealand and the approved archaeologist is on site to monitor the works. If granted, a set of draft conditions is outlined further below which includes HNZ's request.

Hazards and Safety

- [91] The Applicant proposes the storage of LPG gas cylinders on the site in association with the commercial uses on the ground floor. While only 4 x 45kg cylinders are proposed, there are two outdoor deck areas where a barbeque and associated 20kg cylinder could be established on the site. If the tenancy agreements were to allow a 20kg cylinder on each deck this would bring the total volumes up to exceed those allowed for on the site. A volume of 200kg is permitted. The location of any complying hazardous substances will be reviewed as part of any building consent.
- [92] The Dunedin City Operative Plan identifies the site as being on land that is potentially subject to intensified shaking and liquefaction and to flooding. The proposed 2GP also identifies the site as being within a Hazard 3 Flood Overlay Zone. These risks may necessitate further consideration in terms of floor levels at the detailed design stage for building consent. As the activity is for a non-complying activity, the Council has the discretion to apply minimum floor levels to the proposed development if it is considered necessary. If the Panel are minded to grant consent, advice notes are included in **Appendix 5** which alerts the consent holder to the need to consider these design requirements. The Applicant may wish to address the Panel at the hearing regarding such design considerations already incorporated in the development. The advice notes alert the consent holder to the importance of designing for these hazards, if they have not already been considered, and to the need for a variation to the resource consent, where the height of the building increases, either to breach the height limit (9m) or increase the degree of encroachment into the height plane angle. It is however, acknowledged that the proposal continues to provide for commercial at ground floor which is considered to be a non-sensitive use.

Positive Effects

- [93] The development will provide for a redevelopment of an underutilised, well located, highly visible site within an already dense mixed use neighbourhood.
- [94] The proposed building will also rejuvenate an older commercial property and better frame the corner of Forth Street and Union Street in context with buildings on adjacent street corners.
- [95] For the reasons above, I concur with the Applicant that the proposal offers positive effects for the local community in terms of an improved architectural presence at the street intersection.

Cumulative Effects (Assessment Matter)

- [96] 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".

- [97] 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'.
- [98] The proposed development has a cumulative effect on the residential amenity of the adjoining residents due to the combination of the commercial use, the over dense residential accommodation, the site coverage breach, car parking deficiency, the height plane angle breach and other bulk and other yard setback breaches at the street boundaries. In considering whether the cumulative effect is minor or more than minor, it is important to consider the effect of the existing commercial activity and the existing bulk and location breaches on the site. It is also important to consider the effect of a wholly compliant residential multi-storey development, as I have done above. In my opinion, the multiple breaches and the cumulative effect of those breaches does not amount to a cumulative effect that is more than minor due to the existing land use on the site and the existing footprint, the design of the proposed development and the character of the environment within which the development is located.

Proposed 2GP

- [99] At time of writing, there were no applicable assessment rules.

Effects Assessment Conclusion

- [100] 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 District Plan (Section 104(1)(b)(vi))

- [101] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

Dunedin City District Plan

- [102] 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. Policy 4.3.1 Maintain and enhance amenity values.	The proposal is consistent with this objective and policy. As set out earlier in this report, the development in many respects improves the residential amenity of the site as a whole with a higher quality of commercial development and a higher quality of student accommodation in a central location. The design of the building and the maintenance of good setbacks off adjoining boundaries at first and second floor level where residential is proposed ensure that the amenity enjoyed by the adjoining properties is maintained. While those properties will not have an open outlook as they have enjoyed previously, any permitted development of the site would have closed the outlook off to the south.
Objective 4.2.3 Sustainably manage infrastructure	
Objective 4.2.5 Provide a comprehensive planning framework to manage the effects of use and development of resources.	The mixed use combined with the proposed density result in a development that could potentially place a greater pressure on the Council's infrastructure than planned for. The proposals seeks to address this potential imbalance and rule breach by promoting as part of the application the installation of water saving devices (including, but not being limited to showers, kitchen taps and water efficient washing machine/dishwashers inlets and dual flush toilet cisterns). A storm water holding tank is also integrated into the development. The Water and Waste Services Team considers that these will assist in mitigating any adverse effects on Council's reticulated infrastructure resulting from the additional habitable rooms. The proposal is therefore considered to be inconsistent with the objective 4.2.3, 4.2.5 and Policy 4.3.5.
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.	Policy 4.3.7 and 4.3.8 seek to avoid incompatible uses. The proposal is considered to be consistent with these policies. The commercial activities already exist within this residential environment therefore the proposal does not introduce a new conflict. There is a need for some

	commercial activities to service residential activity and the long term existence and success of the subject commercial use within this environment is evidence of this. The Applicant has demonstrated the ability to mitigate the effects from the introduction of upper floor accommodation. The proposal is considered to be consistent with the adoption of a holistic approach outlined in Policy 4.3.10 which is for an improved integrated mixed use development within a neighbourhood that is not strictly residential, nor of the standard makeup in terms of height and scale.
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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.	The character of the residential area in which this development is proposed is such that commercial activity already exists on the site and services the adjoining Campus Zone activities. The inclusion of residential accommodation within this site is in keeping with the intention of the zone, while achieving a design that maintains the residential amenity that existing residential development adjoining the site currently enjoys. The proposal is considered to be consistent with this policy and objective.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	
Objective 8.2.3 Ensure that the housing resource adjacent to the Campus is protected from the adverse effects of competing land use activities Policy 8.3.3 Protect the housing resource in the residential area near the Campus from the adverse effects of competing land use activities and allow for the maintenance and further development of housing.	The proposal is inconsistent with this objective and policy. The commercial land use is in conflict with the policy, however, it already exists, therefore this aspect of the proposal is not considered to further undermine the housing resource. The proposal also provides for additional residential accommodation above the existing commercial land use, which supports this objective and policy.
Objective 8.2.4	The use of the site residential activity is

Ensure that the exiting urban service infrastructure servicing residential areas is sustained for the use of future generations.	inconsistent with the objectives and policies. The density of the development when combined with the commercial use at ground floor results in a density that potentially exceeds the capacity of the urban service infrastructure. The Applicant has sufficiently demonstrated that additional measures built into the design of the development will ensure no extra demand is placed on the City infrastructure.
Policy 8.3.4 Ensure that the density of new development does not exceed the design capacity of the urban service infrastructure.	
Policy 8.3.8 Within the rural/urban fence, provide for urban settlement in those areas where the urban service infrastructure can absorb additional development.	
	The site is zoned appropriately for the proposed new land use and the Council's Water and Waste Services Team are satisfied that the site can absorb additional development proposed with the measures proposed by the Applicant. Therefore, 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 lack of on-site parking has been mitigated through an offer of bike storage within the site and by the location of the site in close proximity to the city and to services. The target group for residents for the development will benefit from the mitigation offered by the location of the development close to the City, the University/Polytech and other student services as well as by the provision of bike storage within the property. The proposal continues the provision of safe interaction of pedestrians and vehicles around this corner with the continued provision of verandahs and the introduction of entranceways rather than sliding doors directly onto the street. For these reasons, the proposal is considered to be consistent with these objectives and policies.
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.	
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.	No signage is proposed as part of the application, however, as it is considered integral to the continuation of the commercial use at ground floor these objectives and policies are still considered relevant. The proposal is considered to be consistent with these policies and objectives given the lack of signage/discrete nature of signage (within the windows of the premises) that the plans currently show. Further consideration of these provisions is required following any revised signage scheme for the property. The removal of verandah signage within this environment results in reduced visual clutter.
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 consistent with this objective and policy. The proposal has addressed the potential for any mechanical plant siting and extraction/ventilation to impact on the amount of noise at this property. Additionally, the Applicant has been asked to provide additional evidence that the potential for excessive night time light disturbance is mitigated given the high use of glass on the northern and western elevations.
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	

- [103] Overall, the development is considered to be **consistent** with the District Plan.
- [104] The key objectives are those relating to the maintenance of residential amenity and provision for suitable infrastructure and mitigation of adverse effects on the transportation network.
- [105] Importance has been given to those objectives seeking to protect the housing resource that the Residential 3 Zone seeks to provide for. The development provides for an additional housing resource for students while continuing to provide for the commercial activity services, which anecdotal evidence suggests the community has come to rely upon. The design of the building reflects a design response to the multi-storeyed buildings in the immediate vicinity.
- [106] I consider that the development will potentially better utilise a site which is not fully developed (above ground floor level), however, the objectives and policies of the Plan reflect a desire for the level of development to be balanced with the need to maintain residential amenity and the level of infrastructure provided to the area. The proposed level of development should not exacerbate existing transportation concerns or raise new amenity related problems associated with an increased scale of development and a mixed use development. Overall, the proposal is considered to be a high quality medium density form of development that is consistent with the existing streetscape character of the zone. Due to the existing land use on the site and the existing building footprint, the design of the proposed development and the character of the environment within which the development is located, this development is considered acceptable.

Proposed 2GP

- [107] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:
- [108] **Objective 2.2.1 and Policies 2.2.1.1, 2.2.1.2, 2.2.1.7 (Strategic Directions - Hazards)** seek to manage the risk to people and property from natural hazards by managing land use and development based on the sensitivity of activities. **Policy 2.2.1.7** identifies that in the hazard overlay

zones, greater leniency can be applied where the expansion of existing activities is proposed, in the knowledge of the pre-existing financial investment and other operation. The proposal represents reinvestment into an existing commercial activity which is consistent with the direction of this policy. The proposal continues to provide for less sensitive land use at ground floor level. I consider that the proposal is **consistent** with these objectives and policies.

- [109] **Objective 2.4.1 and Policy 2.4.1.5 and 2.4.1.6 (Strategic Directions – Built Character)** which seek to protect and enhance the amenity and aesthetic coherence of different urban environments and the compact and accessible form of Dunedin by managing building bulk and location, site development (including site coverage) and overall development density in residential neighbourhoods. The aim being to maintain or create attractive streetscapes and to protect the amenity of residential activities on surrounding sites. Policy 2.1.1.6 seeks to avoid visual clutter from signage. While the proposal has not illustrated the level of signage that will be present on the building, signage is implicit in continuing the commercial activities at ground floor. It is clear that with the higher quality nature of the development and the more streamlined verandah profile that a more restrained sign scheme is likely and will considerably reduce the level of signage that is currently displayed on the existing building. The proposal is considered to be **consistent** with this objective and policy as the new development will improve the streetscape at this corner intersection while demonstrating that the amenity of adjoining residential activity can be maintained.
- [110] **Objective 2.2.5 and Policies 2.2.5.2 and 2.2.5.3** seek to promote development that is designed to reduce environmental costs as well as adverse effects on the environment as much as practicable, including energy consumption, water use, and the quality and quantity of stormwater discharge. Policies seek to enable and encourage on-site stormwater and wastewater management. **Policy 2.2.5.3** seeks to encourage improvements to the environmental performance of new housing by encouraging new medium density housing in parts of the city that have old housing stock and through rules that require outdoor living space to be on the sunny side of buildings and requiring principal living areas to connect to the outdoor living space. The proposal is considered to be **consistent** with this policy and in particular promotes Policy 2.2.5.3.
- [111] **Objective 2.7.1 and Policy 2.7.1.1 (Strategic Directions – Efficient Public Infrastructure)** seek to ensure that public infrastructure operates efficiently and effectively and has the least possible long term cost burden on ratepayers by avoiding future pressure on public infrastructure through rules which achieve the following: restrict the density in line with current or planned infrastructure capacity; through consideration of infrastructure capacity as part of zoning; through assessment of any discretionary or non-complying activities that would consume wastewater or stormwater infrastructure capacity provided for another activity intended in the zone and prevent it from occurring; and through rules that control the area of impermeable surfaces in urban areas to enable stormwater to be absorbed on-site and reduce the quantity of stormwater run-off. The proposal is considered to be **inconsistent** with this objective and policy however, not contrary due to the ability to mitigate the adverse effects of developing this site through the design of on-site systems.
- [112] **Objective 2.7.2 and Policy 2.7.2.1** seek to manage the location, number and design of vehicle accesses, and require on-site car parking where required to enable adequate accessibility and/or to avoid or adequately mitigate adverse effects on the safety and efficiency of the transport network; and manage the design of parking, loading and access areas to achieve a safe and

efficiency transport network for all road users. The proposal is considered to be **inconsistent** with this objective and policy due to a continuation of a lack of on-site parking at this site. However, the proposal is able to demonstrate an ability to off-set any demand for cars by catering to a student market that is already well located for public transport and proximity to services, as well as a provision for on-site bike storage. While off-site, the Council's Transport Team have not indicated that the five minute parking arrangements outside the site will be changed which continues to service the commercial operations.

- [113] **Objectives 15.2.1, 15.2.2, 15.2.3 and Policies 15.2.1.1, 15.2.1.2, 15.2.1.5 and 15.2.2.1, 15.2.3.1 (Management Zones - Residential)** which seeks to reserve residential zones for residential activities with a limited range of commercial activities, including dairies where the effects of them can be managed. Policy 15.2.1.5 seeks to avoid those commercial activities unless they do not detract from the vibrancy of the City Centre and where located in a residential zone it will have significant positive effects in terms of supporting the needs of the community and visitors to the area and the location is appropriate for the proposed activity and any adverse effects from noise, vehicle movements and on-street parking supply can be avoided or, if avoidance is not possible, adequately mitigated. The proposal is **consistent** with this objective and policies because it has a demonstrated a long term need for servicing the residential area and the Campus Zone adjoining. The location of a dairy/café is considered appropriate given the dense nature of the residential living and the high volume of visitors and commuters in and around this area in association with the university. Policy 15.2.2.1 requires activities in residential zones to maintain a good level of amenity of surrounding properties and public spaces through compliance with bulk and location controls. The development maintains sufficient setbacks from the adjoining properties albeit the road adjoining boundaries are built up to the boundary to better frame the site relative to the height of buildings nearby. Objective 15.2.3 and Policy 15.2.3.1, 15.2.3.1 require buildings in the inner city residential zone to be of a height and setback from boundaries that ensure there are no more than minor effects on sunlight access of current and future buildings and their outdoor living spaces. The proposal has no effect on the outdoor living space of 74 Forth Street and the effect on 116-118 Union Street is mitigated by the separation distance of 2.5m. Policy 15.2.3.3 also requires compliance with height and setback requirements to ensure a high quality medium density form of development that is consistent with the existing streetscape character of the zone and a reasonable provision of outdoor amenity. The proposal is considered to be **consistent** with these objectives and policies.
- [114] **Objective 6.2.3 and Policies 6.2.3.3, 6.2.3.4 and 6.2.3.9 (Transportation Section)**, which seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods. The proposal is consistent with this objective and policies because there will be no adverse effect on the local road networks associated with the development. The existing arrangements will be replicated including no introduction of vehicle accesses and no on-site parking. The provision for on-street parking supply is already high in this area, with timed angle and parallel parking along both streets and a five minute customer parking provision already well-established for the existing commercial use. The provision of on-site car parking may necessitate two vehicle crossings and remove much of the five minute on street parking. As set out above, I concur with the Council's Transport Officer that provision for on-site secure bike storage is considered sufficient to mitigate the effect of the two new units because of the target group the accommodation is designed for and the location of the site. The proposal is considered to be **consistent** with this objective and these policies.

- [115] **Objective 11.2.1 and Policy 11.2.1.8 (Natural Hazards Section)**, seek to ensure that new buildings intended for sensitive activities (including residential) have a floor level that mitigates risk from flooding and rising groundwater so that risk is no more than low. The site is located in the Hazard 3 – Flood Zone. The proposal is considered to be **consistent** with this objective and these policies. The re-development of the site is considered able to offset any adverse effects associated with flooding in the future, due to the continuation of commercial activities at ground floor and the more sensitive residential use only proposed at first and second floor level. With the raising of floor levels, there is the potential for a step-up into the building however, should this arise, the new recessed entrance designs continue to enable mobility access by provided a recessed area within which the ground can be sloped up to the door.
- [116] Overall, the proposal is considered to be **consistent** with the Proposed 2GP. The key objectives relevant to this decision are those relating to residential amenity and transportation as they signal recognition of the need for development to avoid any adverse impact on the transportation network, and the need for development to be proportionate to the site.

Overall Objectives and Policies Assessment

- [117] While the proposal is consistent with the objectives and policies of the Proposed 2GP, more weight has been given to the current Operative Plan given the 2GP decisions for the Residential Sections of the Plan have not gone to a hearing yet.
- [118] 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.

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

- [119] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago (RPS) was made operative in October 1998 and has been taken into account. Given its regional focus, the regional policy statement does not have a great bearing on the current application. However, in particular, the proposal was assessed against the objectives and policies of Chapters 4: Manawhenua, 5: Land and 9: Built Environment.
- [120] The Proposed RPS is under review and Otago Regional Council has released its decisions on Saturday 1 October 2016. The RPS is now subject to an appeal period of 30 working days after the decision. Given the RPS continues to have a regional focus, the proposed RPS continues to have little bearing on the current application. However, in particular, the proposal was assessed against the objectives and policies of Chapters 1 (Kai Tahu Values, Rights and Interests/Kaitiakitaka and Chapter 3 (Resilient, Safe and Healthy Communities). Objective 3.2 and policies 3.2.1 – 3.2.11 recognises the risk that natural hazards pose to the community and seek to reduce the potential impacts on people's safety, health and wellbeing. Objective 3.9 seeks to ensure that hazardous substances are carefully managed to avoid creating any adverse effects on the environment. Policies designed to achieve this objective seek to promote an integrated management of hazardous substances. Consideration has been given to the levels of hazardous substances that will be stored on the site given the mixed commercial/residential activities. Objective 3.7 seeks to ensure a high quality built environment that is well designed and integrates effectively with the adjoining urban environment, thereby reducing pressure on the surrounding productive and natural environment and policies designed to achieve objective

3.7 seek to promote low impact design techniques and warmer buildings. The proposal is considered to be consistent with these objectives and policies.

- [121] Overall, the proposal is considered to be consistent with the relevant objectives and policies of both the current and proposed Regional Policy Statement for Otago.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [122] 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.
- [123] Of particular relevance to this application are Sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", relevance to this application are Sections 5(2)(c) "avoiding, remedying or mitigating any adverse effects of activities on the environment", 7(b) 'the efficient use and development of natural and physical resources, 7(c) "the maintenance and enhancement of amenity values" and 7(f) "the maintenance and enhancement of the quality of the environment".
- [124] In respect of Section 5(2)(c), I consider that the proposed development will not create more than minor adverse effects on the environment when considered in the context of the receiving environment and the provisions of the District Plan as they relate to Residential Zones. The proposal incorporates dense residential living on the site plus commercial activities which has the potential to create tensions for existing infrastructure. However, the Applicant has proposed building design measures to offset any additional demand on the service infrastructure and the tension on the transportation networks is alleviated by the proximity to the central City and to facilities servicing a targeted student accommodation market. It is my opinion, that the Applicant will also be able to offer design responses to address any residual concerns raised regarding privacy and any potential night time disturbance resulting from the high volume of glass adjoining the site.
- [125] I therefore consider that the proposal will avoid, remedy or mitigate adverse effects to a degree that satisfies the provisions of the District Plan. 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.
- [126] Having regard to Section 6 of the Act, there are no matters of national importance which can be considered to be adversely affected by the development of this site.
- [127] Having regard to Section 7(b), the proposal can be considered to be an efficient use and development of an existing physical resource. While the development involves demolishing the existing building, the new development is a mixed use development that provides for a more efficient development of the site incorporating the existing commercial while achieving the provision of residential above. In my opinion, not allowing the site to be developed could be an inefficient use of a land resource.

- [128] In relation to Sections 7(c) and 7(f) regard has been given to whether the proposal will provide an acceptable level of amenity to the residents on the subject site and adjoining. While consideration has been given to the existing level of on-site amenity values, the proposal is considered to enhance amenity values of the site and surrounds due to the overall higher quality modern development proposed within a neighbourhood recognised by Council's Urban Design Officer as having a 'mixed level of amenity and built quality'. The privacy concerns raised by the submitter have been addressed in the effects assessment and are aptly compared with the privacy provided by a fully complying development of the site. When considering amenity values of neighbouring sites and the quality of the residential environment, it is considered that the proposal will maintain amenity levels on adjoining sites and enhance the overall quality of the residential environment adjoining and the mixed use environment surrounding.
- [129] Overall, I consider the proposal is consistent with those matters outlined in Part 2 of the Act.

Section 104D

- [130] 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.
- [131] As discussed above in the assessment of effects, it is considered that the proposal has adverse effects on amenity and on the transportation networks that are no more than minor.
- [132] 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.**
- [133] 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.
- [134] 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 both the Dunedin City District Plan and the proposed 2GP (bearing in mind that limited weight should be given to the 2GP at this stage, because all aspects of that proposed plan are potentially subject to challenge). In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being consistent with the relevant objectives and policies of the Residential Section and Transportation Sections of both the operative and proposed plans. The proposed development is therefore considered to also **satisfy the second 'gateway' test** outlined by Section 104D.
- [135] 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.

- [136] If the Committee do not agree that the application passes the gateway test, then the Committee cannot give consideration to granting consent and it must be refused under Section 104D.

Section 104 (1)(a)

- [137] 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 minor and can be adequately avoided, remedied or mitigated provided recommended conditions of consent are adhered to.
- [138] 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 both the Dunedin City District Plan and the Proposed 2GP. While key to a consideration of this proposal are the objectives and policies of the 2GP, several submissions have been received in respect of the relevant objectives and policies and the rules setting out minimum density, site size and height plane angle by way of example. In light of the opposing submissions on the relevant objectives and policies of the 2GP, they have been given little weight. Therefore, the focus of my assessment is under the operative plan.
- [139] 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 and the Proposed Regional Policy Statement.

Other Matters

- [140] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [141] Case law indicates 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.
- [142] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan. The previous use of the site was a stand-alone out of zone commercial operation. The inclusion of the proposed residential use is an anticipated use in the zone. As the existing commercial footprint of 100% exists, it is a relatively unique and confined proposal, better utilising the entire build envelope within the site. Therefore I consider that its potential approval would be unlikely to undermine public confidence in the Plan's provisions.
- [143] 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

- [144] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions/declined. A schedule of

recommended conditions of consent and advice notes incorporating those matters raised in the report are included as **Appendix 5**.

RECOMMENDATION

- [145] The proposal externalises the bulk of the building at the road boundaries of the site. This is a design response to the environment surrounding but also has the effect of providing a greater level of amenity within the building and a greater minimum setback off adjoining residential boundaries. In doing so, there is greater provision for open space amenity at second floor level and a greater level of separation between buildings which results in a scale of the development that is well integrated into its residential setting and mitigates any adverse effects.
- [146] Having regard to the above assessment, I recommend that the application be granted. If the Committee are minded to grant consent, but there are residual concerns around potential privacy effects raised by the submitter, then additional conditions may be inserted in response to additional design measures offered by the Applicant.
- [147] A schedule of conditions is provided in **Appendix 5**.

REASONS FOR RECOMMENDATION

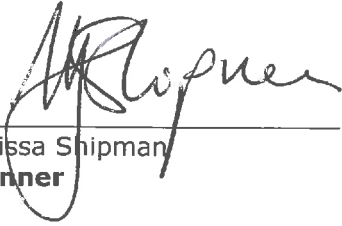
- [148] In my opinion, the proposal does not represent an over development and over intensification of the site, given the ability to mitigate adverse effects on residential amenity, on the infrastructure and on the transportation network. The overall development of the site to a more integrated commercial/residential development improves the appearance of the commercial use on the site within this environment as well as providing additional accommodation of a higher quality while mitigating the adverse effects associated with additional building on the site and a higher density of residential use.
- [149] 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.
- [150] The proposal is considered to be consistent with the key relevant objectives and policies of both the Dunedin City District Plan and the Proposed 2GP.
- [151] The proposal is considered to be consistent with the objectives and policies of the Regional Policy Statement for Otago and the Proposed Regional Policy Statement.
- [152] 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.
- [153] The proposal is considered to be a true exception for the following reasons:
- The site has 100% site coverage. The footprint of the existing building covers 100% of the site.
 - The consented baseline is commercial use at ground floor level with no on-site provision for car parking.

- The site is a corner site at the intersection of two collector roads adjoining the Campus Zone on two boundaries to the east and south of the site.
- The site is located within an existing mixed use multi-storied built environment.

[154] The proposal is considered to be consistent with the Part 2 matters of the Resource Management Act 1991.

[155] If the Committee is minded to grant consent, conditions and advice notes are recommended by Officer and these are outlined further below in **Appendix 5**.

Report prepared by:



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Planner

16 October 2016

Report checked by:



Kirstyn Lindsay
Senior Planner

16 October 2016