

Before a Panel appointed by Dunedin City Council

In the Matter of the Resource Management Act 1991

And

In the Matter of of an application by Barry and Victoria Smaill to undertake a multi-unit development including demolition of existing buildings and earthworks at 43 Cargill Street, Dunedin

LUC-2018-679

Right of Reply

Dated 3 November 2020

Contents

Topic	Paragraphs
Introduction	1 – 3
Shading	4 – 6
Roof Garden	7 – 9
Basement Parking	10
Earthworks and Retaining Walls	11 – 12
Wastewater	13 – 15
Draft Conditions	16 – 17
Lapse Date	18
Appendix 1a: Shading Diagram	
Appendix 1b: Explanation of Shading Diagram	

Introduction

1. The hearing for this matter was held on Monday 12th October 2020. During the hearing several matters arose requiring clarification or further information. The applicants exercised their right to provide a written right of reply.
2. This right of reply is to be read in conjunction with the evidence of Ms Peters, and the application including responses to further information requests.
3. The proposed activity has an activity status of restricted discretionary.

Shading

4. Mr Smaill, who is a licenced building practitioner for both designing and building, provided explanation at the hearing of the shading diagrams provided and the reasons why there were no effects at other times of the day at the times of year selected due to typography, permitted building envelope and sun path. Council's Urban Designer, Mr Luke McKinley, requested shading diagrams be prepared for 9am at the different times of the year already provided. Mr Smaill has prepared these diagrams and an explanation all of which is attached at Attachments 1a and 1b respectively. For the sake of completeness, diagrams for 3pm have also been provided as this time was also mentioned by Mr McKinley during the hearing.
5. The effects of the shading by the breaches of the HPA (2006 plan) and the HIRB (2GP) are in the range negligible (2006 plan breaches) to less than minor (2GP breaches). Given that the 2GP HIRB provisions are under appeal with mediation yet to occur on this appeal point, more weight should be placed on the 2006 plan HPA provisions. The breaches of the 2006 plan HIRB provisions are negligible in terms of shading effect.
6. The multi-unit building is located in the *Residential 4* (2006 plan) and *Inner City Residential* zone which both of which are medium density zones. It is to be expected that buildings in this zone will have some effects with respect to shading particularly given the maximum permissible height increase from 9m (2006 plan) to 12m (2GP). The proposed multi-unit building consistently complies with the 9m height limit of the 2006 plan excepting three minor roof breaches which cause no shading effects on neighbouring properties.

Roof Garden

7. Both Councillor Walker and Councillor Barker raised concern in relation to the operation of

the roof garden with Councillor Walker asking if the applicant would consider the removal of these from the proposal.

8. The applicants wish to retain the roof garden spaces. They consider that these will provide additional amenity space for residents of the units and will add vibrancy to the *Inner City Residential* zone which is a medium density zone.
9. Ms Peters concurs with the advice of Mr Buxton, consultant planner for Council, that the roof top gardens are not a matter to which the discretion of Council in this matter extends. Noise, glare and lighting with respect to the operation of these spaces will be governed by the rules in the district plan with enforcement options available to Council for breaches of these rules.

Basement Parking

10. The applicants confirm that cycle parking will be provided at the rear of the basement car park. There was discussion regarding provision of mobility car parking. The applicants are happy to provide this car park as a non-mobility car park.

Earthworks / Retaining Walls

11. Although earthworks and retaining walls are a matter for consideration pursuant to the resource consent application care needs to be taken to not conflate resource management matters with the building consent process. The retaining walls will be designed by a structural engineer and will form part of the building consent application. The building consent process will ensure that the structurally engineered retaining walls are suitably designed and built for purpose. The building consent process ensures that in the building of the walls that no damage to neighbouring properties due to instability will occur.
12. The proposed conditions of consent adequately address earthworks and retaining walls from a resource management perspective.

Wastewater

13. Mr Kochan from 3 waters confirmed at the hearing that the issue with wastewater surcharge appears to arise from stormwater infiltrating the wastewater network particularly during high rainfall events. Councillor Barker asked whether the work currently being undertaken by Council on George Street would help resolve this issue but Mr Kochan was unable to answer Councillor Barker's question.

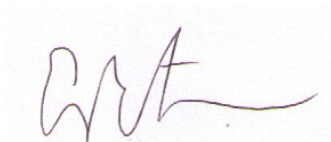
14. Ms Peters concurs with the advice of Mr Buxton that the 2006 plan Residential 4 density provisions provide for four residential units per 200m² and that it is the 2006 plan density provisions which have greater weight due to the appeal of the 2GP Inner City Residential density provisions not being fully resolved at this point in time.
15. The proposed multi-unit building complies with the 2006 plan Residential 4 density provisions and, therefore, provision of infrastructure, including wastewater, cannot be relied on to decline a grant of consent.

Draft Conditions

16. The applicants would prefer that condition 33 is deleted. This is because they currently use the garage parking space on site and plan to continue using at least one parking space in the basement car park once building is complete. However, they are not planning on residing on site.
17. The applicants understand that they would be required to obtain resource consent prior to leasing the car parks to non-residents of the site.

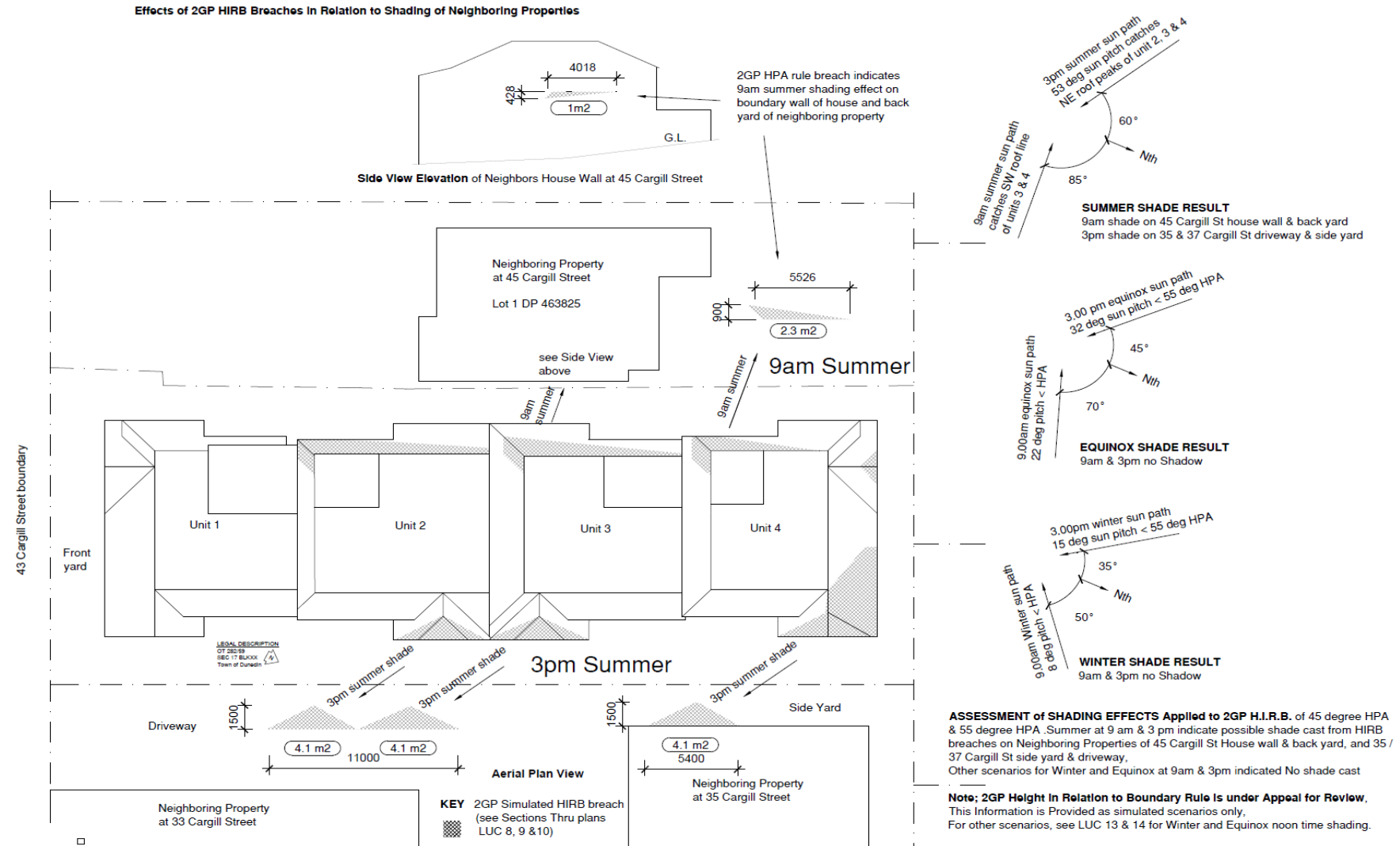
Lapse Date

18. The applicants request that the Hearings Panel grant the consent with a lapse date of 10 years as requested. Ten years provides the best timeframe for the applicants with respect to current and future workloads with their other projects and also allows flexibility in managing availability of professionals, builders and contractors post Covid lockdown and with the upcoming Hospital rebuild and University projects. For these reasons, the applicants request that, as a minimum, the Hearings Panel provides for a lapse date of no less than 7 years.



Emma Peters (BA (First Class Honours), MA (Distinction), LLB)

Attachment 1a: Shading Diagram



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PROPOSED RESIDENTIAL ACCOMMODATION UNITS AT 43 CARGILL STREET, DUNEDIN.

RESOURCE CONSENT FIR 2GP HPA SHADING
SCALE A1 1: 100 A3 1:200
DRAWN B SMAILL REG LBP 119890
OCTOBER 2020

LUC 17

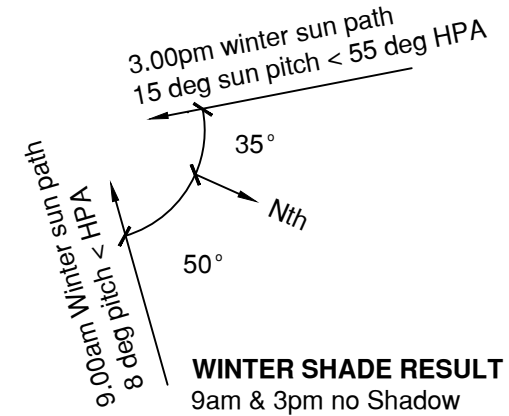
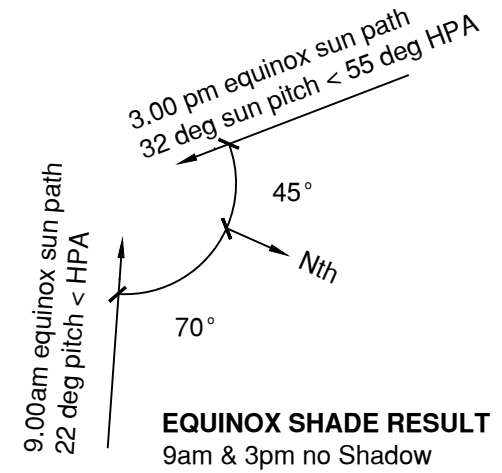
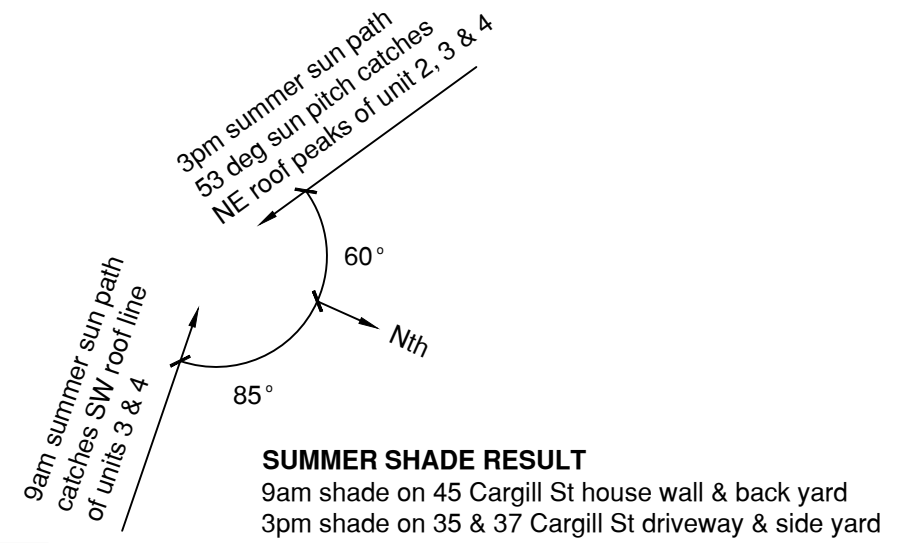
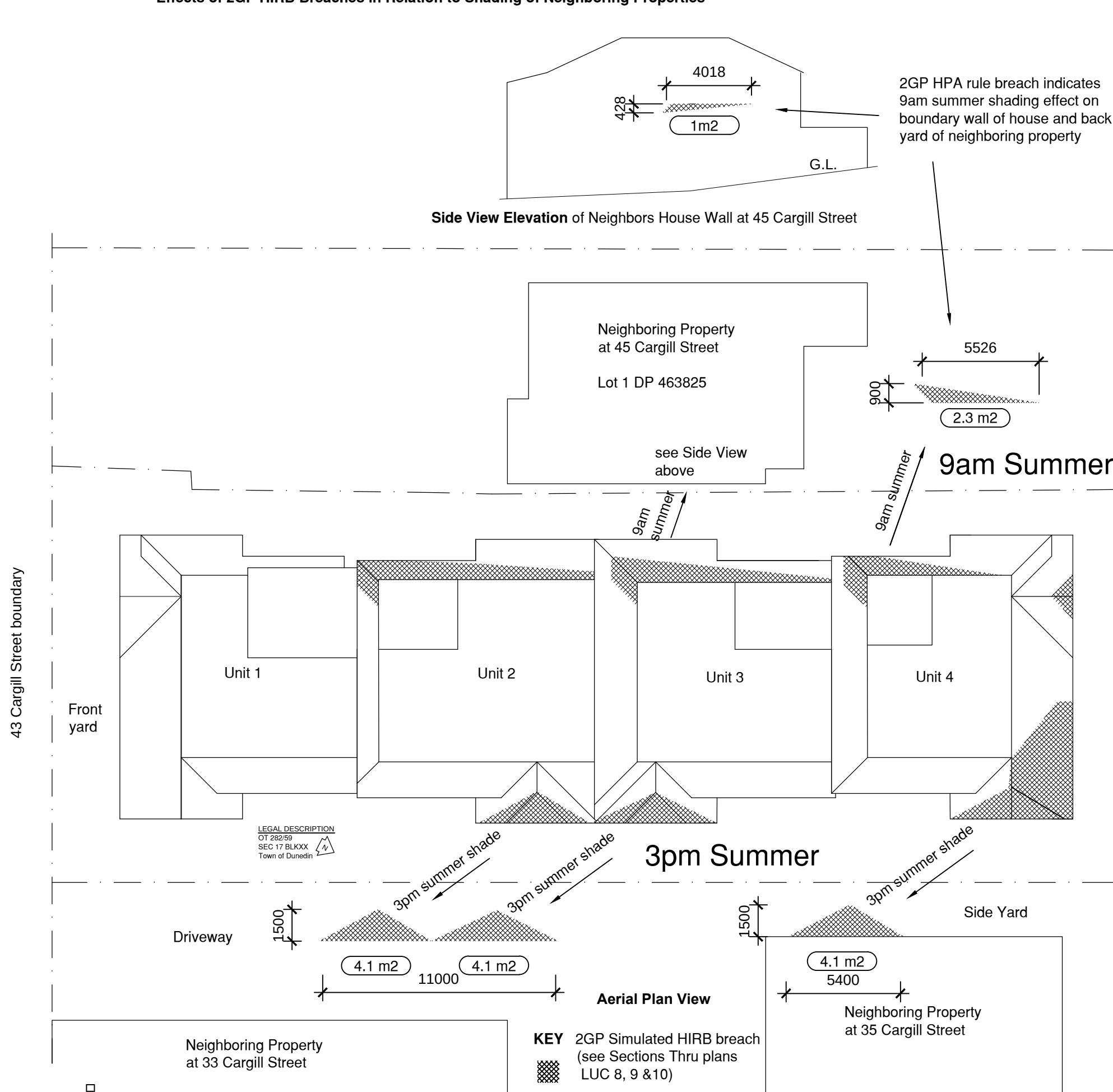
Attachment 1b: Explanation of Shading Diagram¹

Effects of 2GP HIRB breaches in relation to shading of neighbouring properties (see Attachment 1a 'LUC Plan 17'):

- Summer at 9am indicates two shade areas on 45 Cargill Street: (i) 1m² on boundary wall of house; and (ii) 2.3m² on back yard.
- Summer at 3pm indicates three shade areas on 35 Cargill Street: (i) 2 times 4.1m² on driveway; and (ii) 4.1m² on side yard.
- Equinox at 9am indicates no shade.
- Equinox at 3pm indicates no shade.
- Winter at 9am indicates no shade.
- Winter at 3pm indicates no shade.

¹ Explanation prepared by Mr Smaill.

Effects of 2GP HIRB Breaches in Relation to Shading of Neighboring Properties



ASSESSMENT of SHADING EFFECTS Applied to 2GP H.I.R.B. of 45 degree HPA & 55 degree HPA .Summer at 9 am & 3 pm indicate possible shade cast from HIRB breaches on Neighboring Properties of 45 Cargill St House wall & back yard, and 35 / 37 Cargill St side yard & driveway, Other scenarios for Winter and Equinox at 9am & 3pm indicated No shade cast

Note; 2GP Height in Relation to Boundary Rule is under Appeal for Review, This Information is Provided as simulated scenarios only, For other scenarios, see LUC 13 & 14 for Winter and Equinox noon time shading.