

TO: Hearings Committee

FROM: Jane O'Dea, Associate Senior Planner

DATE: 9 February 2026

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2025-146
33 RUSSELL ST

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 5 February 2026. 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] I recommend that the application be granted consent, subject to the conditions set out in Appendix 5 of this report. While the restaurant component may result in minor effects on the residential amenity of the nearest neighbouring properties and on local parking availability, these effects are considered no more than minor and are unlikely to render the proposal incompatible with amenity expectations in the residential zone.
- [3] In making this recommendation, I acknowledge that there is a degree of conflict with key objectives and policies relating to commercial activities not specifically provided for in residential zones, including restaurants.

DESCRIPTION OF PROPOSAL

- [4] Resource consent is sought to undertake the following activities:
- Make external alterations to the building, which is a character contributing building within a heritage precinct.
 - Operate part of the ground floor, and the upper floor, as visitor accommodation. The unit will have a kitchen and living/dining area on the ground floor and 4 bedrooms and two bathrooms on the upper level.
 - Operate a café with on-licence on the ground floor. The café will serve hot and cold food and beverages either prepared on site or supplied pre-prepared, and will operate with an on-licence.
 - Within the café area, provide a small grocery offering including wine for at-home consumption. Retail area will be approximately 3m² in floor area.

[5] Further details of the café are as follows:

- The ground-floor café will include a public area, staff-only counter areas, bathrooms, and a commercial kitchen.
- The total floor area for the café is approximately 68m², with approximately 30m² available as public café space.
- Internal seating will be limited to a maximum of 25 seats.
- Access to the café will be via a new entrance at the corner of Russell Street and Arthur Street; and an accessible entrance on Russell St.
- Patrons will not have access to the existing outdoor area to the northwest of the building.
- Hours of operation are proposed to be 7am to 10pm, seven days a week.
- Outdoor seating will not be available after 9pm.
- Maximum occupancy will be 35 people, including staff, with up to 6 staff (but more likely 3 staff), and up to 8 outdoor seats.
- Signage will comprise one sign above the veranda ("Tomboy") and two small coffee-related signs.
- Music will be limited to background music inside the premises.
- Deliveries will be carried out by the owner or via courier. No large vehicles are anticipated for deliveries.
- No on-site car parking for the café or visitor accommodation activity is proposed.

[6] Further details of the external building alterations visible from public place are as follows:

South elevation (elevation facing 98 Arthur St)

- Infilling two openings at ground floor level
- Installation of two new extract ducts to south elevation of building
- Installation of grease extract to the south roof slope with folded aluminium screen
- Installation of roof access hatch

West elevation (facing 41 Russell St)

- Heat pump unit to lean to roof

North and east elevations (facing Russell & Arthur St's)

- New gate/screen to entrance to residential/visitor accommodation unit (Russell St)

- Above verandah 'Tomboy' sign to be mounted on existing brackets at corner of building.
- New entrance at Russell St/Arthur St corner of building;
- 'Allpress' sign under verandah at corner;
- Window and door alterations and enlargements, including to create a serving hatch on Russell St.

[7] Conditions offered are:

- An annual noise review condition;
- No trucks are allowed to deliver to the site;
- If required, the open space to the north-west of the building is to be screened from 98 Arthur St prior to visitor accommodation commencing;
- If required, the bedroom with the window looking towards 98 Arthur St is not to be used for visitor accommodation (limiting the visitor accommodation to 3 bedrooms).

[8] A copy of the application, including plans of the proposed alterations and layout is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

[9] The site is a 233m² site located on the corner of Arthur St and Russell St. There is an existing two storeyed building which, according to Council records, dates from around 1923 and was purpose built as a shop and dwelling. The building is built up to the Arthur St and Russell St boundaries and there is a vacant courtyard/parking area to the west of the building. There are two directly adjacent properties, these being 41 Russell St and 98 Arthur St.

[10] The wider locality is a city fringe neighbourhood typified by older, medium density housing, with a mix of single and two-storeyed buildings. There is an early childhood education centre which occupies two separate buildings at 76 Russell St. This is the only non-residential activity that I have noted in the area.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

[11] The application was submitted on 8 May 2025. It was indicated to the applicant that the likely process for the application would be limited notification. The application was then placed on hold for an extended period while the applicant undertook neighbourhood consultation and provided further information.

[12] On 1 December 2025 a marginal activity notice under section 87BA was issued to authorise the removal of a window and installation of a new door in its place on the western elevation of the building (**MTAC-2025-24**). This work originally formed part of the current application but has now been authorised and no longer needs to be considered as part of the current application.

[13] On 9 December 2009 resource consent was granted under **LUC-2009-279** to establish a food business where customers can purchase café/deli style food or baked goods and pre-

prepared meals that can be taken off the premises for home consumption. The consent was explicit that it was not for a café. The decision on LUC-2009-279 noted that there *'was previously a corner dairy selling a basic range of grocery items as well as limited range of food to go. The operation of the dairy ceased in December 2008.'* LUC-2009-279 also confirmed that existing use rights applied for the dairy, food store and take away business. To my knowledge this consent was not given effect to and has lapsed.

- [14] Also on 9 December 2009 resource consent was granted under **LUC-2009-466** to establish additional residential activity in the former store which is internally linked to the residential activity on the first floor. It is proposed to add two additional bedrooms, a new bathroom and a new external door. The primary reason consent was required appears to have been the boundary setback infringements of the existing building.
- [15] LUC-2009-279 and LUC 2009-466 were mutually exclusive and not able to operate in conjunction with each other.

ACTIVITY STATUS

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

- [16] Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the "District Plan 2006", and the Proposed Dunedin City Second Generation District Plan. On 19 August 2024, the Proposed Dunedin City Second Generation District Plan became partially operative and now supersedes the District Plan 2006, except for limited specific provisions and identified areas that are still subject to appeal. Where these provisions and appeals are relevant, the District Plan 2006 must still be considered.
- [17] In this instance, there are no relevant appeals, and this application has been processed with reference to the 2GP only.
- [18] The site is zoned Inner City Residential (ICR) and is subject to the following overlays:
- City Rise Residential Heritage Precinct
 - Character Contributing Building (CCB) 854
 - Archaeological Alert Layer
 - Russell St is a Local Road and Arthur St is a Collector Road in the 2GP Road Classification Hierarchy.
- [19] Visitor accommodation is a restricted discretionary activity in the Inner City Residential zone in accordance with Rule 15.3.3.22. As no on-site parking is proposed there is no requirement to meet the mobility parking performance standard (Rule 15.5.8). Due to the small scale of the visitor accommodation activity, there is no requirement to meet the vehicle loading performance standard (Rule 15.5.9). Council's discretion is restricted to the following matters:
- Effects on accessibility
 - Effects on the safety and efficiency of the transport network
 - Effects on surrounding sites' residential amenity
 - Effects on streetscape amenity and character
 - Effects on efficiency and affordability of infrastructure
- [20] Restaurants and retail are non-complying commercial activities in accordance with Rule 15.3.3.23 ('all other activities in the commercial activities category'); and the licensed premises aspect is also a non-complying activity in accordance with Rule 15.3.3.12 which

specifies that ancillary licensed premises have the same activity status as the underlying activity.

[21] In terms of the proposed works to the building, external alterations to a CCB that are visible from an adjoining public place are a restricted discretionary activity in accordance with Rule 15.3.4.9. Council's discretion is restricted to 'effects on heritage streetscape character.'

[22] The proposed signage requires consent for the following signage performance standard breaches:

- Rule 15.6.11.1.d which states that signs must not be illuminated in heritage precincts, whereas the two coffee signs will be illuminated.
- Rule 15.6.11.2.a which states signs must not be attached to roofs, whereas the proposed 'Tomboy' sign is attached to the veranda roof.
- Rule 15.6.11.2.d states signs attached to a building must not protrude from the building façade by more than 1m. The proposed 'Tomboy' sign is attached to the roof (being part of the building) and protrudes more than 1m from the façade (although it is not attached to the façade).
- Rule 15.6.11.5.a allows a maximum of 1 sign being attached to a building, whereas the proposal involves 3 signs.
- Rule 15.6.11.5.b requires the highest point of a sign to be 4m above ground level, whereas the proposed 'Tomboy' sign is approx. 5.5m above the ground.

In accordance with Rule 15.6.11.1.d the above matters are a restricted discretionary activity. Council's discretion is restricted to: 'effects on neighbourhood residential character and amenity' and 'effects on the safety and efficiency of the transport network.'

Overall activity status

[23] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.

[24] In this case, I consider that the building alterations, visitor accommodation, and café are distinct activities that can be considered separately in terms of the substantive decision on whether consent should be granted. The signage is part and parcel of the café activity.

[25] The building alterations and visitor accommodation are **restricted discretionary** activities (the matters of discretion are outlined above); while the café is a **non-complying** activity.

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

[26] The site is not a recognised HAIL (Hazardous Activities and Industries List) site, and to my knowledge it has not been investigated to establish whether any HAIL activities have been undertaken on the site. The National Environmental Standard only controls change in land use where the land use is reasonably likely to harm human health; or if soil disturbance exceeding certain thresholds is being undertaken. In this situation, the use is changing from residential to commercial and that new land use will not raise any implications for

human health. No earthworks are proposed. As such, the National Environmental Standard is not applicable to the proposal.

NOTIFICATION AND SUBMISSIONS

- [27] Some written approvals/letters of support were provided with the application, however these were not in the prescribed form and accordingly have not been treated as formal approvals for the purposes of section 95.
- [28] 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.
- [29] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties.
- [30] The application was notified to the owners and occupiers of the following properties:
- 41 Russell St
 - 43 Russell St
 - 45 Russell St
 - 49 Russell St
 - 51 Russell St
 - 52 Russell St
 - 54 & 56 Russell St
 - 60 Russell St
 - 62 Russell St
 - 64 Russell St
 - 98 Arthur St
 - 102 Arthur St
- [31] Submissions closed on 10 December 2025.
- [32] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Andrina Kitto	Support	Submitter owns the cottage at 41 Russell St and remembers the time the building was still a corner store and what a popular place and asset to the community it was. The current proposal makes good use of a heritage building thereby preserving the character of this early settled area of Dunedin. Believes the proposal will create a small hub and gathering place for the community and believes it will be an improvement on the grotty accommodation in the more recent past. Acknowledges there will be a bit more pressure on parking in Russell St, however this will be somewhat alleviated by the recent introduction of angle parking on Russell St. Mentions that dedicated resident's parking would be welcome.	Yes

Heidi Greenfield	Support	Generally in support of the application, however subject to concerns regarding increased parking demand in the area and noise. Notes that the properties at 52, 54, 56, 58, 60, 62 Russell Street are physically unable to install off-street parking on their sites. Requests that a residents parking area be provided outside 52-62 Russell Street to mitigate increased parking demand from visitors to the cafe. Requests that the parking spaces outside 52-62 Russell Street be marked to improve parking efficiency and decrease instances of single vehicles occupying more than one parking space (photograph illustrating the issue attached). Acknowledges that the applicant has offered an annual review of noise as a condition and agrees that would be appropriate.	No
Joanne Baldwin	Oppose	Submitter lives at 98 Arthur St and has restored the cottage. Requests that the application be declined for these reasons: The site is zoned residential and commercial activities are not consistent with the residential zone or values. Statements in the application about the former land use have zero weight. Existing use rights have been extinguished. Hours of operation will introduce a number of adverse effects such as noise, smoking, traffic, odour, lighting and general activity atypical of a residential use. Staff will be on site earlier and later than the proposed opening and closing hours. Car parking is already compromised by Council's recent alterations to parking in the area. Proposal will introduce additional demand. The submitter has previously been advised that the only residents only parking available is located on Duncan St. The effects of ducting backing onto the submitters' property have been understated in the application. Noise and odours will impose on upstairs bedroom and guest bedrooms facing Arthur St.	Yes

		Seating outside will introduce additional effects that have not been addressed. There will be an increase in smoking, vaping and anti-social behaviour. The proposed café, off-licence, visitor accommodation and retail is too great for the site's capacity. The application understates the effects of delivery vehicles. The proposal will directly affect the amenity of the submitter's property and therefore will impact on the property value. The application refers to a consent held for an unrelated activity. This statement should be disregarded. The proposal fails the s104D test and the application fails to assess section 104D correctly. The issue of precedent has not been appropriately assessed and this could lead to a precedent for cafes to establish on other residential zoned sites.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[33] 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

[34] 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.

[35] As a comparison with the proposed visitor accommodation activity, standard residential activity, which encompasses the following types of housing, is a permitted activity:

- *short-term house rentals*
- *living accommodation subject to a tenancy agreement under the Residential Tenancy Act 1986*
- *boarding houses*
- *the temporary accommodation of non fee-paying household guests inside residential buildings or in portable structures or vehicles*
- *supported living accommodation (with 10 or fewer residents); and*
- *emergency and refuge accommodation.*

[36] Working from home is permitted activity as a sub-activity of residential activity, subject to performance standards concerning hours of operation, maximum gross floor area and mobility parking.

Working from home is defined as follows:

The use of land and buildings as a place of work, as part of an occupation, craft, profession, or service, ancillary to their use as a principal place of residence. For the sake of clarity, this means that the activity:

- *can only be carried out by a person or persons living on the site as their principal place of residence; and*
- *cannot employ any other person on-site, including by way of operating from the site (relying on equipment or vehicles stored on the site or making regular visits to the site).*

Working from home may include retail services but not direct retail sales except for goods produced on-site.

For the sake of clarity, this definition includes:

- *hosted visitor accommodation, in the form of homestays, bed and breakfast, or similar, for no more than five guests, provided the accommodation is contained within the same residential unit that is being used as the principal place of residence;*
- *early childhood education for five or fewer children; and*
- *animal breeding involving one breeding pair of dogs and/or cats.*

[37] Restaurants are a non-complying activity, and moreover all commercial activities require consent in this zone. There is therefore no particularly useful permitted baseline that can be utilised in relation to the restaurant aspect of the proposal.

[38] In terms of noise, Rule 9.3.6 sets out maximum noise limits of 50 dB LAeq (15 min) from 7am to 7pm; 45 dB LAeq (15 min) from 7pm to 10pm; and 40 dB LAeq (15 min) and 70 dB LAFmax between 10pm and 7am. Resource consent would be specifically required to exceed these noise limits.

[39] In terms of building alterations to a character contributing building, these are permitted where not visible from an adjoining public place.

[40] The receiving environment mainly comprises residential activity. There is a consented early childhood education centre occupying two adjoining properties at 76 Russell St. As discussed in paragraph 8 above, LUC-2009-279 relating to the subject site has lapsed and does not form part of the receiving environment.

Assessment of Effects

- [41] The assessment of effects is guided by the assessment matters in Sections 15 (Residential) and 6 (Transportation), 9 (Public Health and Safety) and 13 (Heritage) of the 2GP.
- [42] As a non-complying activity there is little specific assessment guidance relating to the restaurant activity. Accordingly, assessment is made of the following effects of the proposal:
- Effects on the Centres Hierarchy
 - Effects on Heritage Streetscape Character
 - Transportation and accessibility
 - Effects on the efficiency of water, wastewater and stormwater infrastructure
 - Effects on neighbourhood amenity and surrounding sites' residential amenity
 - Positive Effects
 - Cumulative Effects

Effects on the Centres Hierarchy

- [43] The Centres Hierarchy is a key concept embedded in the 2GP, intended to identify and protect a network of commercial centres, ranging from neighbourhood centres through to the central business district (CBD), which functions as the primary focus for economic activity and employment growth. This approach is articulated in the Strategic Directions section of the 2GP, particularly Objective 2.3.2 and its supporting policies. Locating certain commercial activities, such as offices and retail, outside these identified centres has the potential to undermine their vitality and function.
- [44] Policy 2.3.2.2 identifies the principal mechanism for managing this risk: the imposition of rules that restrict retail and office activities outside the centres, unless such activities are unlikely to contribute to, or may detract from, the vibrancy of the centres, or where they are otherwise provided for under Policies 18.2.1.3 or 15.2.1.5. It is relevant to note that the strategic direction primarily targets retail and office activities. Restaurants and cafés, while a subset of “commercial activities,” are not specifically referenced in Policy 2.3.2, suggesting they are not perceived as posing the same level of threat to the centres hierarchy. However, the corresponding residential zone policy (15.2.1.5) does not draw this distinction and refers more broadly to the avoidance of “commercial activities.” This creates a degree of tension between the strategic direction and the zone policy intended to implement it.
- [45] Notwithstanding this, the overarching intent of the policy framework is clear: to prevent a proliferation of large-scale commercial activities—such as offices and supermarkets—relocating from the CBD and established centres into other zones that may offer advantages such as greater land availability and more convenient parking.
- [46] The proposal is a bespoke mixed-use development within an existing purpose-built commercial/residential building that has a long-standing history of commercial use. The café component is small in scale, locally focused, and closely connected to the surrounding community and its day-to-day needs. I do not consider that the proposal would give rise to the adverse effects anticipated by Objective 2.3.2 or Policy 2.3.2.2, nor do I consider that the café is of a scale or nature that would materially affect the functioning or vitality of the CBD or other commercial centres.

Effects on Heritage Streetscape Character

- [47] The DCC's Heritage Advisor, Ms Heather Bauchop, reviewed the application and commented that, overall, the proposed use of the building as a café would enhance the heritage streetscape character by restoring an active community function to the building and City Rise. She noted that the proposed alterations would encourage the continued use of the building and create an attractive and welcoming façade.
- [48] Ms Bauchop observed that the existing north-facing ground-floor shopfront has been reconfigured from its original 1923 design, reflecting the previous change from commercial to residential use. The proposed design reinstates a commercial shopfront, better reflecting the building's earlier use and enhancing the heritage streetscape. The proposed alterations to the shopfront are generally supported, as they promote the ongoing use of the building and contribute positively to streetscape character.
- [49] Ms Bauchop's comments itemise the proposed alterations and note that they are generally supported. She also advises that, where window and door joinery details are not specified, timber joinery is preferred.
- [50] Ms Bauchop noted that the proposed commercial kitchen and bathroom require new ducting and air vents. The plans indicate that these vents and ducts are to be located on the south wall, including two small air vents (150–200 mm ducting venting from the bathroom and kitchen) and a larger 350 mm grease duct.
- [51] The south wall is visible when travelling north along Arthur Street. Ms Bauchop considered that the grease duct leading to the roof fan is large and would be visually intrusive when viewed from the street, and is therefore not appropriately located.
- [52] To minimise adverse effects on heritage streetscape character, Ms Bauchop identified several alternative options, including installing the grease duct internally and venting it through the roof, and shrouding any visible ducting. The applicants have adopted these recommendations and submitted amended plans reflecting these changes. Ms Bauchop also recommended that the two kitchen extract ducts be located closer together and made the same diameter to reduce their visual impact. This recommendation has also been adopted, with the ducts on the south elevation repositioned accordingly.
- [53] Overall, the application has satisfactorily addressed the matters of concern raised by the Council's Heritage Advisor in relation to effects on heritage streetscape character.
- [54] I adopt Ms Bauchop's assessment and further note that the building still clearly reads as a commercial building at ground level with residential accommodation above as per its original construction. The proposed change of use of part of the ground floor to a café will restore an active community use to a space that is not particularly well suited to residential activity, given its large street-facing windows and close proximity to the footpath. The proposed building alterations will enhance both the appearance of the building and the wider heritage precinct.

Transportation and accessibility

- [55] Mr Reese Martin, DCC Transport Planner, reviewed the application and his assessment is summarised below.
- [56] In relation to access, Mr Martin noted that the site is currently served by an existing hard-surfaced vehicle crossing from Russell Street which provides access to a sealed driveway and car parking area. No changes to the existing vehicle access are proposed.

- [57] Mr Martin also noted that the proposal includes the creation of a new accessible entrance in the location of an existing doorway from Russell Street, along with a new primary pedestrian entrance to the café at the corner of Russell Street and Arthur Street.
- [58] Overall, Mr Martin considers the proposed vehicle and pedestrian access arrangements to be acceptable.
- [59] With respect to parking and manoeuvring, Mr Martin noted that no changes are proposed to the existing on-site parking area. On the assumption that this parking will continue to serve the permitted residential activity, he is satisfied that this arrangement is acceptable.
- [60] Mr Martin emphasised that outdoor seating is not being consented or approved as part of this application and must be applied for separately under the Trading in Public Places Bylaw. The location and effects of any outdoor seating are therefore best considered through that process. Nevertheless, Mr Martin considered the potential presence of outdoor seating for the purposes of his transport assessment.
- [61] Mr Martin assessed the proposed signage and noted that it complies with key transportation-related standards, including those relating to lettering size for legibility by passing motorists and minimum clearance heights above the footpath. He also concluded that the signage would not be of a design or form that resembles or conflicts with traffic signs. Overall, the signage is considered acceptable from a transportation perspective.
- [62] In assessing traffic generation, Mr Martin relied on information provided by the applicant, including that the proposed café will provide 25 internal seats, with the potential for up to eight additional external seats on the adjacent footpath, and employ up to six staff.
- [63] Mr Martin advised that NZTA Research Report 453 Trips Related to Land Use provides the most relevant guidance for assessing traffic generation for a restaurant activity. Based on an 85th percentile rate of 0.5 vehicle trips per seat during the peak hour, or 6.1 trips per seat per day, the proposed activity could generate approximately 16 vehicle trips in the peak hour and around 207 trips per day.
- [64] The applicant's own assessment anticipates a customer volume of approximately 50–100 customers per day, with peak periods occurring between 7.30–8.30am, 12.00–1.00pm, and 3.00–4.00pm, and evening peaks between 6.00–8.00pm. On average, the applicant anticipates approximately eight customers per hour, which is generally consistent with the trip generation rates identified in NZTA Research Report 453.
- [65] Mr Martin notes that actual vehicle trip numbers are likely to be lower than these estimates, as the café will be located within a residential area and is expected to primarily serve the needs of the local community, many of whom are likely to walk rather than drive.
- [66] Although the District Plan no longer includes minimum car parking requirements following the introduction of the National Policy Statement on Urban Development, Mr Martin has considered the potential effects of the proposal on on-street parking demand given that a café is not a typical residential zone activity. The applicant has advised that the café is community-focused and, as such, any additional parking demand is expected to be low.
- [67] Mr Martin also noted that recent Council-initiated parking changes on Russell Street have increased the supply of on-street parking, which will help offset any increase in demand arising from the proposed activity.

- [68] As part of his assessment, Mr Martin advised that the DCC Transport Safety Team and an external traffic consultant reviewed the proposal and agreed that there appears to be additional on-street parking capacity in the surrounding area. They consider that the proposal is unlikely to give rise to any significant transport concerns in terms of additional traffic generation or parking demand.
- [69] Mr Martin further noted that the recent upgrade of the Russell Street / Arthur Street intersection, including the installation of a roundabout and raised pedestrian crossings, has significantly improved safety for both vehicles and pedestrians. The upgraded intersection is considered capable of accommodating the proposed change in use and any associated effects on the local transport network.
- [70] In relation to servicing and deliveries, Mr Martin noted that no dedicated delivery area is proposed and that deliveries would therefore rely on available on-street parking near the site. He expects that deliveries are likely to occur outside of morning and evening peak periods. The applicant has advised that no large delivery vehicles are anticipated and has agreed to this being secured by a condition of consent, which Mr Martin considers appropriate.
- [71] Mr Martin reiterated that outdoor seating is not being consented or approved as part of this application and must be applied for separately under the Trading in Public Places Bylaw.
- [72] I adopt Mr Martin's transport assessment, as it falls within his area of expertise. Subject to a condition restricting deliveries to small vehicles, I am satisfied that the effects of the proposal on the transport network will be no more than minor.
- [73] All three submissions raised concerns regarding increased pressure on on-street parking. Recent changes to parking arrangements on Russell Street, including the conversion from parallel to angled parking, have resulted in an increase in available parking spaces. Conversely, the introduction of pedestrian crossings and refuges as part of the roundabout upgrade has reduced parking availability on Arthur Street.
- [74] It is acknowledged that café patrons may occupy parking spaces that would otherwise be used by residents or members of the general public, such as city workers. In the worst-case scenario, this may occasionally require residents without off-street parking to park further from their homes, resulting in some inconvenience. However, as identified by Mr Martin, there appears to be sufficient on-street parking capacity in the surrounding area to accommodate this demand.
- [75] The submission from Ms Greenfield requested the provision of resident-only parking outside 52–62 Russell Street, and that parking spaces in this location be marked to improve parking efficiency. While there may be scope for further parking improvements, this is a matter for DCC Transport. Mr Martin has advised that any changes to on-street parking arrangements, if required, are best considered outside the resource consent process.
- [76] Mr Martin raised no transport-related concerns in relation to the visitor accommodation activity.
- [77] It is my observation that the effects of this activity on the transport network, including on street parking, are likely to be comparable to, or potentially less than, those associated with a typical residential use given that guests may share one or two vehicles, whereas in a flatting type situation there may be a number of adults each with their own vehicle.

- [78] The District Plan requires consideration of ‘accessibility’ in relation to visitor accommodation. The proposal does not alter existing access arrangements and will not result in any changes to accessibility beyond the current situation. Visitors are likely to access the site by car, utilising available on-street parking, or by taxi, public transport, or on foot.

Effects on the efficiency of water, wastewater and stormwater infrastructure

- [79] DCC 3 Waters has reviewed the application and provided the following advice in relation to existing services.

DCC GIS records indicate the presence of a 100 mm diameter water supply pipe, a 225 mm diameter stormwater pipe, and a 150 mm diameter wastewater pipe within Russell Street. Records also show a 100 mm diameter water supply pipe and a 150 mm diameter wastewater pipe within Arthur Street.

- [80] In respect of water supply, 3 Waters has advised that an existing water connection to the property may be retained, subject to its suitability. Any new water connection, or any modification to the existing connection, will require an “Application for Water Supply”.
- [81] 3 Waters has further advised that non-domestic water connections require the installation of a reduced pressure zone (RPZ) boundary backflow prevention device and a water meter. Installation of an RPZ device requires either a building consent or an exemption from building consent, through which the device specifications and proposed location will be approved. Retrofitting an RPZ device or meter also requires an “Application for Water Supply” to modify the existing connection. Following installation at the approved location, a completed “Notification of a New Boundary Backflow Prevention Device” form must be provided to 3 Waters.
- [82] 3 Waters has requested that installation of an RPZ device be included as a condition of consent.
- [83] While the requirement for an RPZ device is established under the DCC Water Bylaw, and a condition of consent would therefore duplicate an existing regulatory requirement, the 2GP seeks to “maintain or enhance the efficiency and affordability of public water supply” (Objective 9.2.1). In circumstances where there is an elevated risk of contamination of the public water supply, such as where a non-domestic use is proposed, I consider there is a planning basis for imposing such a condition. Accordingly, I have recommended that a condition be included requiring the installation of an RPZ device should consent be granted.
- [84] 3 waters also commented on Trade Waste Bylaw requirements. Under the Trade Waste Bylaw, the Dunedin City Council requires all food businesses/premises engaged in the cooking, preparation or sale of food (e.g: restaurants, takeaways, hospitals, hotels, bakeries, butcheries and supermarkets) to install and regularly maintain a system (such as a grease trap) that removes fats, oils and grease from the wastewater discharged from that business.
- [85] 3 Waters requested a condition of consent requiring a Trade Waste Application Form to be submitted to DCC 3 Waters prior to any commercial or industrial activity taking place on-site.
- [86] I am less convinced that this would make an appropriate condition of consent given that fulfilment of the condition can only be achieved via the separate bylaw approval process.

I consider that the Trade Waste application requirement should be included as an advice note, rather than a condition, should consent be granted.

- [87] Overall, it is apparent that 3 Waters hold no inherent concerns about the impact of the proposal on the Council's reticulated water and wastewater networks, subject to the technicalities of appropriately dealing with trade waste and backflow prevention. I therefore consider that any effects on the Council's water and wastewater networks can be managed via existing processes outside the RMA, and the proposed condition of consent requiring the installation of a backflow prevention device.

Effects on neighbourhood amenity and surrounding sites' residential amenity

- [88] Visually, the building will not change significantly. A doorway and a small window opening on the south elevation (facing 98 Arthur St) will be infilled, and slim service ducting will be installed on this elevation. While these changes will be visible from 98 Arthur St, they have been designed to be relatively unobtrusive.
- [89] Overall, the building alterations will make a positive contribution to the character and appearance of the neighbourhood. I do not consider the proposed café to be incompatible with amenity expectations in a residential zone, particularly given that the site has, for most of its history, been used for commercial activity and continues to read as such from a visual perspective. Small neighbourhood cafés and similar commercial activities, such as dairies and fish and chip shops, commonly coexist with residential uses elsewhere in the city and can provide a valued local amenity that contributes positively to community life.
- [90] Potential adverse effects on neighbourhood amenity and the residential amenity of surrounding sites are most likely to arise from increased activity levels, potential noise disturbance, and odour effects. These matters are considered in turn below.
- [91] The owner and occupant of 98 Arthur St, which directly adjoins the subject site, has raised concerns relating to noise, vaping, and anti-social behaviour.
- [92] As context for the below assessment in relation to noise and odour, I note that the primary focus of the café activity will be oriented toward Russell St, where the majority of parking is located and which has the sunniest aspect. The café will have no openings in the wall facing 98 Arthur St. Other than patrons walking to and from their vehicles, no activity is anticipated directly in front of 98 Arthur St. I also note the presence of a substantial hedge, which provides a reasonable level of privacy to the front of that property.

Noise

- [88] Some level of noise disturbance is likely to be associated with the proposal, including voices, staff movements, background music, waste handling, vehicle movements and car doors closing.
- [89] It may be useful for the applicant to clarify waste handling arrangements at the hearing, including the proposed location of café bins, frequency of use, collection arrangements, and whether any measures are proposed to ensure that waste handling does not unduly affect neighbouring properties, particularly in terms of noise and odour.
- [90] The application was referred to the Council's Environmental Health department for comment. Ms Alison Blair, Environmental Health Officer provided comments.

- [91] Ms Blair identifies that 'Noise from heat pumps and ducting, if not correctly installed and maintained, have potential to create a noise nuisance' and that 'Delivery vehicles that service the café have potential to create a noise nuisance if delivery times occur before 7.00am.'
- [92] The application states that music will be limited to background music inside the premises and offers a condition for an annual noise review.
- [93] Based on the information provided, there is no reason to conclude that noise generated by the restaurant would exceed the applicable 2GP noise limits, as no particularly noisy activities are proposed. The anticipated noise sources are typical of an urban environment and are similar to those generated by normal residential activity, such as people arriving and departing at various times. In this context, noise would be of a type reasonably expected in this setting notwithstanding that it may be audible to nearby residents. However noise disturbance may occur more frequently due to increased activity at the site.
- [94] The proposed hours of operation are relevant in assessing potential noise impacts. The café will operate between 7am and 10pm, and any noise disturbance would be confined to these hours, with only a brief shoulder period either side. Patrons will not be permitted to use outdoor areas after 9pm. Accordingly, noise impacts at unsociable hours, particularly during the night, will not occur.
- [95] Ms Blair, the Environmental Health Officer considers that 'The proposal is for a small scale business activity with reasonable hours of operation.' She endorses the conditions offered by the applicant in relation to noise management and controlled hours of delivery.
- [96] Should consent be granted, I consider it appropriate to impose a condition prohibiting the use of outdoor seating after 9.00 pm, limiting music to background music only, and requiring an annual noise review. These measures either form part of the application or have been offered as conditions of consent, and represent reasonable mitigation measures given the presence of sensitive residential receivers in close proximity to the site. Together, they appropriately limit the scale and intensity of the activity and address potential adverse noise effects.
- [97] I also consider it appropriate to include a condition precluding live music. I consider this is necessary to ensure that the activity remains focused on its intended use as a small-scale café/restaurant, and does not expand into activities such as live music events. Such activities could potentially occur as part of a restaurant use without triggering further resource consent requirements, yet they fall outside the scope of the application as lodged and described. Live music would also be likely to generate noise effects that have not been assessed as part of this application and would not be appropriate within a predominantly residential environment.
- [98] Noise from visitor accommodation is likely to be similar to that generated by normal residential activity, while recognising that the potential for the occasional inconsiderate guest cannot be precluded (and neither can the potential for noisy neighbours.) I consider that appropriate management of the activity's effects on surrounding sites, primarily 41 Russell St and 98 Arthur St, can be achieved through the use of standard conditions controlling aspects such as the playing of amplified music, use of the outdoor area, and provision of manager's contact details.

Odour

- [99] The operation of a café kitchen has the potential to generate odour effects, and it is acknowledged that such effects cannot be entirely avoided. Any odour effects would be experienced, if at all, by nearby residential receivers, and this issue has been raised in the submission from the owner/occupier of 98 Arthur Street.
- [100] Odour effects are inherently subjective and vary depending on individual sensitivity, frequency, and duration of exposure. In assessing the potential effects of the proposal, it is relevant that the activity does not involve processes typically associated with offensive, noxious, or persistent odours, such as those arising from industrial or intensive food-processing activities.
- [101] Cooking-related odours are a common and generally accepted effect in residential environments, arising from typical domestic kitchen activities that utilise extractor systems. The District Plan also provides for limited-scale commercial food preparation as part of a permitted 'working from home' activity, up to 50 m² in floor area, which is comparable in scale to the kitchen proposed as part of this application. While such permitted activities may not be prevalent in residential zones, this illustrates that the Plan anticipates a degree of odour generation associated with small-scale food preparation in residential settings.
- [102] These matters are noted not to discount the concerns raised by the submitter, but to assist in assessing the likely character, intensity, and scale of odour effects arising from the proposed activity. In this context, any odour effects are anticipated to be intermittent, of a domestic or low-level commercial nature, and limited in duration.
- [103] I also note that the proposed kitchen exhaust system will discharge vertically at roof level via ducting on the southern elevation, rather than horizontally toward neighbouring properties, including 98 Arthur Street. This design response will assist in dispersing odours and reducing the likelihood of adverse effects at neighbouring residential receivers.
- [104] Having regard to the nature of the activity, the scale of food preparation proposed, and the design of the extraction system, I am satisfied that any odour effects are unlikely to be more than minor and can be appropriately managed through standard extraction and ventilation measures.

Light Spill

- [105] The café windows would not be oriented directly towards any neighbouring property and generally have cover from the verandah, ensuring there will be little vertical light spill.
- [106] Any outdoor lighting will need to be designed so as to comply with Rule 9.3.5 of the 2GP which includes lux levels and a requirement to shield and/or direct lighting away from adjoining properties.
- [107] Provided these requirements are met then I would not expect light spill from the activity to adversely affect people's health and safety.

Positive Effects

- [108] The proposed café will provide an amenity accessible to the local community in an area that is not particularly well served for shops or cafes.

- [109] I acknowledge that whether it could be considered a café will enhance the neighbourhood is somewhat subjective, however the submissions received from those parties who were notified of the application suggest that two of the closest neighbours consider that it will be a positive for the community and consider the application should be approved.
- [110] From a heritage streetscape perspective, the adaptive re-use of the building will bring the building back closer to its original mixed commercial and residential function, to which the building is inherently better suited than using the former shop space for residential activity. The building alterations will enhance the building and wider precinct.

Cumulative Effects

- [111] 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”.

- [112] 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’.
- [113] I do not hold any significant concerns about cumulative effects. There are certainly no other similar activities that have established or are seeking to establish in the City Rise area. In terms of the wider Dunedin context I am not aware of a trend of restaurant activities establishing in residential zones that would mean this application represents any kind of tipping point that will cumulatively compromise the amenity of residential zones or the viability of the CBD and Centres.

Effects Assessment Conclusion

- [114] 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))

- [115] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the 2GP are assessed below:

Proposed 2GP

Provision text/summary	Assessment
Objective 2.3.2. and Policies 2.3.2.1 & 2.3.2.2 – Strategic Directions These provisions establish and protects Dunedin’s centres hierarchy, ranging from the CBD through to principal, suburban, rural, and neighbourhood centres, each with a defined	While not perfectly aligned, I consider the application to be generally consistent with these provisions, having regard to the conclusions reached at Sections 43–46 that the proposal will not detract from the functioning of the CBD or Centres. This is notwithstanding that the proposal involves a commercial activity occurring outside the CBD or a Centre, which is not generally

role in providing commercial services and supporting community identity and daily needs. Policy 2.3.2.2 seeks to maintain or strengthen economic activity within the CBD and centres by restricting retail and office activities outside these areas, unless those activities would not support centre vitality or are specifically provided for under other policies.	supported by the Plan. Nevertheless, Policy 2.3.2.2 places specific emphasis on retail and office activities, and does not expressly refer to cafés.
Objective 15.2.1 - Residential Zones Residential zones are primarily reserved for residential activities and only provide for a limited number of compatible activities, including: visitor accommodation, community activities, major facility activities, and commercial activities that support the day-to-day needs of residents.	The visitor accommodation component of the proposal is consistent with this objective, as it is expressly identified as a compatible activity. The café component cannot be regarded as consistent with the objective. Restaurants have a non-complying activity status and are therefore not among the commercial activities that the zone provides for as anticipated outcomes. While this weighs against the proposal, I do not consider the café component to be contrary to the objective. The objective is directed at enabling activities that are compatible with the residential environment and that serve the day-to-day needs of residents. In this case, the café is small in scale and locally focused, and while not expressly provided for, it has characteristics that align with the intent of locally serving activities, such as dairies, which are provided for on a restricted discretionary basis. On balance, I therefore consider the café component to be inconsistent with, but not contrary to, the objective.
Policy 15.2.1.2 - Residential Zones Provide for a limited range of major facility activities and commercial activities, including dairies, training and education, and visitor accommodation, where the effects of these activities will be managed in line with objectives 15.2.3 and 15.2.4, and their policies.	The policy is more specifically aimed at managing the effects of commercial activities that are somewhat permitted in the zone and accordingly is of limited relevance to the café aspect, however the thrust of the policy is that commercial activities should be managed so as to align with Objective 15.2.3 and 15.2.4 and their policies. These provisions seek to ensure that activities in residential zones provide a good level of amenity on surrounding residential properties and public places; and maintain or enhance the streetscape. For the reasons outlined in the assessment of effects I consider the proposed café will achieve the outcomes sought. I also consider the visitor accommodation aspect will achieve the outcomes sought in the referenced objectives and policies.
Policy 15.2.1.5 - Residential Zones	The application involves a commercial activity (restaurant/café), which is not provided for as a

Avoid commercial activities, other than those expressly provided for, from locating in residential zones, unless: a. the activity will not detract from the vibrancy and functioning of the centres hierarchy; and b. the site is adjacent to a centre and it provides a logical extension to a centre; and c. the centre is at, or very close to, capacity; and d. the development activities are done in accordance with the performance standards of the street typology (if relevant) of the adjacent centre zoned sites; and e. the development maximises opportunities for integration with the centre; or	permitted, controlled, restricted discretionary, or discretionary activity. The intent of Policy 15.2.1.5 is to uphold the centres hierarchy by avoiding the indiscriminate spread of commercial activities into out-of-centre zones. While I do not consider that the proposal would detract from the centres hierarchy for reasons already discussed under 43-46 above, full consistency with the policy would require all of clauses (a) to (e) to be met. This is not possible in this case, as the site is isolated from any centre. A plain reading of Policy 15.2.1.5 would suggest that the café component could be considered contrary to this core policy. However, in assessing whether an activity is contrary to a policy, it is important to consider the underlying purpose of the policy and the effects it seeks to manage. As discussed earlier in this report, the policy is primarily concerned with avoiding adverse effects on the vitality and function of the CBD and Centres arising from commercial activities relocating outside those zones. Strategic Direction Policy 2.3.2.2 further clarifies that retail and office activities are the primary focus for restriction outside the CBD and Centres. For the reasons outlined in Sections 43–46 of this report, I do not consider that the café would adversely affect the CBD or Centres. The café is small in scale, locally focused, and designed in direct response to its site and context. It is unlikely to locate within, or draw trade away from, the CBD or Centres. In this sense, the proposal does not give rise to the effects that the policy seeks to prevent. While the café is not strictly aligned with the policy on a literal reading, I do not consider it to be diametrically opposed to the policy’s intent when assessed in terms of actual effects and accordingly I consider the proposal to be inconsistent with, but not contrary to the policy. The visitor accommodation component is provided for as a restricted discretionary activity and is more explicitly addressed under Policy 15.2.1.2. It is therefore consistent with the relevant objectives and policies.
Objective 15.2.3 and Policies 15.2.3.2 & 15.2.3.4 - Residential Zones These seek to ensure that activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces, including by requiring	I consider the proposal to be consistent with these provisions. The visitor accommodation component can be anticipated to have effects comparable to standard residential activity, and any residual or unforeseen effects, such as potential noise disturbance, can be appropriately managed through conditions of consent.

activities provided for to operate in a way (including hours of operation) that avoids or, if avoidance is not practicable, adequately mitigates, noise or other adverse effects on the amenity of surrounding residential properties; and only allowing visitor accommodation where it is designed and located to avoid or adequately mitigate adverse effects on the amenity of surrounding residential properties.	The café is oriented away from 98 Arthur Street and has the support of the owner of 41 Russell Street, the two closest neighbouring properties. As noted in the effects assessment, some noise and odour from the café are inevitable; however, these effects are unlikely to be materially different from those commonly experienced in urban environments. The design of the proposal, together with appropriate conditions of consent, will ensure that such effects are minimised to the greatest extent practicable. The hours of operation are moderate, do not involve late night activity, and are expected to comply with the noise limits set out in the 2GP. On this basis, I consider that both the visitor accommodation and café components of the proposal are consistent with the relevant provisions.
Objective 15.2.4 and Policies 15.2.4.5 & 15.2.4.7 - Residential Zones Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood, including by managing ancillary signage; and only allow visitor accommodation where designed to avoid or mitigate adverse effects on streetscape amenity.	The proposed building alterations will enhance the streetscape by tidying the building, reinstating historic features such as the corner entrance, and creating a more active frontage. The proposal is therefore consistent with these provisions. The proposed signage is also appropriate in scale, design, and number, and will not detract from the visual amenity of the area.
Objective 6.2.2 & Policy 6.2.2.3 – Transportation These seek to ensure that land use activities are accessible by a range of travel modes including by only allowing visitor accommodation where customers will have access to appropriate transport services, walking access to centres, frequent public transport services and/or an appropriate range of on-site services/facilities.	I consider the proposal to be aligned with these provisions in that there is on street parking available for guests who have their own vehicle. While the site is not particularly close to any centre, it remains within walking distance of the CBD. Furthermore, the unit has cooking and laundry facilities; and if the cafe aspect is approved then guests would have access to a café.
Objective 6.2.3 & Policies 6.2.3.1, 6.2.3.3, 6.2.3.4, 6.2.3.9 - Transportation These seek to ensure that land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods	No adverse effects of concern have been identified in relation to the safety or efficiency of the transport network. Deliveries can be safely accommodated off-site. While submitters have raised concerns regarding the availability of on-street parking, DCC Transport staff consider that there is sufficient on-street parking to accommodate the proposed activities and have not identified any concerns regarding the effects of the proposed signage on the safety or efficiency of the transport network.

Objective 9.2.2 and Policies 9.2.2.1 and 9.2.2.4 These seek that land use and development, are to be undertaken in a manner that maintains or enhances people's health and safety. In particular, activities must be designed and operated to avoid adverse noise and lightspill effects on people's health, or, where avoidance is not practicable, to ensure any such effects are insignificant.	I consider the application to be consistent with these provisions, as any noise or disturbance generated by the proposal is not expected to be of a scale that would be incompatible with reasonable residential amenity expectations, provided consent conditions about music and the use of outdoor areas are adhered to. In terms of lightspill, the café windows are not oriented directly towards any neighbouring property and have cover from the verandah. Any outdoor lighting will need to be designed so as to comply with Rule 9.3.5 of the 2GP which includes lux levels and a requirement to shield and/or direct lighting away from adjoining properties. Provided these requirements are met then I would not expect light spill from the activity to adversely effect people's health and safety.
Policy 13.2.3 and Policies 13.2.3.2, 13.2.4, 13.2.3.5 and 13.2.3.8 - Heritage These seek to ensure the heritage streetscape character of heritage precincts is maintained or enhanced, including by managing aspects such as the placement of building utilities, signage and additions and alterations to character contributing buildings; as well as by encouraging the adaptive re-use of character contributing buildings.	The proposal is aligned with these provisions. The proposed alterations have been sensitively designed to maintain the heritage streetscape character and represent an adaptive re-use of a purpose-built commercial building that was subsequently converted to residential use.

Overall Objectives and Policies Assessment

- [116] Overall, the proposal can be regarded as generally consistent with the majority of the objectives and policies of the 2GP, as outlined in the assessment above.
- [117] However, Policy 15.2.1.5 is strongly directive, requiring commercial activities to be avoided in residential zones unless specific circumstances apply, which are not met in this instance. Given its directive wording, this policy is afforded significant weight in the objectives and policies assessment. The same applies to Objective 15.2.1, which sits above this policy, although its wording is less directive in nature.
- [118] A plain reading of Policy 15.2.1.5 would suggest that the café component of the proposal is inconsistent with this core policy. However, in determining whether an activity is contrary to a policy, it is relevant to consider the underlying purpose of the policy and the effects it seeks to manage.
- [119] As discussed earlier in this report, the policy seeks to avoid adverse effects on the vitality and function of the CBD and Centres arising from commercial activities relocating outside those zones. In this context, it is also relevant to refer to the strategic directions of the 2GP, particularly Policy 2.3.2.2, which specifically identifies retail and office activities as those that district plan rules should focus on restricting outside the CBD and Centres.

- [120] For the reasons outlined in Sections 43-46 of this report, I do not consider that the proposal would adversely affect the CBD or Centres. The café is not of a scale or nature that would undermine their role or function, and is best characterised as a small-scale, neighbourhood café designed in direct response to its site and context. It is therefore unlikely to locate within, or draw trade away from, the CBD or Centres. In other words the activity can be carried out without giving rise to the adverse effects that the policy is seeking to prevent.
- [121] While the café component is not well aligned with Objective 15.2.1 and Policy 15.2.1.5 on a strict, literal reading, I do not consider it to be diametrically opposed to their intent when assessed in terms of actual effects.
- [122] Accordingly, I have concluded that the café component is inconsistent with, but not contrary to, these key provisions.
- [123] I acknowledge that the Panel may take a stricter interpretation of the policy framework; however, I consider the above contextual analysis to be relevant and appropriate in informing the overall assessment.
- [124] In summary, there is a degree of conflict with the key objective and policy in relation to the café component. I consider the café component to be **inconsistent** with the objectives and policies. The visitor accommodation and building alteration aspects of the proposal are **consistent** with the relevant objectives and policies.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [125] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104

- [126] Section 104(1)(a) states that the Council must 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 proposal will be minor at most.
- [127] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [128] 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 there is a degree of conflict with the key objectives and policies of the 2GP.
- [129] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. Given the very specific and localised nature of the proposal, there are no particularly relevant provisions within the Proposed Regional Policy Statement for Otago; and overall the objectives and policies of the PRPS have been delivered through the 2GP which has been thoroughly assessed in this report.

Section 104D

- [130] Section 104D of the Act provides that a resource consent for a non-complying activity must not be granted unless one of two gateway tests is satisfied. These require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity that will not be contrary to the objectives and policies of the relevant plan or proposed plan.
- [131] Overall, I consider that the actual and potential effects associated with the proposed development will be no more than minor. Accordingly, the first gateway test under Section 104D is satisfied. As only one of the two gateway tests must be met for an application to proceed to consideration under Section 104 of the Act, this threshold is achieved.
- [132] In relation to the second gateway test, for a proposal to be found contrary to the objectives and policies of the 2GP, it must be repugnant to the intent of the Plan and fundamentally at odds with the values of the zone in which it is proposed. In this instance, the proposal has been assessed as either consistent with, or inconsistent with but not contrary to, the relevant objectives and policies of the Plan. On that basis, the proposal is also considered to satisfy the second gateway test under Section 104D.
- [133] Even if the Panel were to disagree with my conclusion in relation to the objectives and policies gateway test, by virtue of the identified conflict with Objective 15.2.1 and Policy 15.2.1.5, the café component would nonetheless satisfy the first gateway test, as the effects of the activity are assessed as being no more than minor.
- [134] In summary, it is appropriate for the Committee to proceed to a full assessment of the application under Section 104 of the Act, and to consider the granting of consent.

Other Matters

- [135] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.
- [136] The matters of precedent and plan integrity are relevant in this instance. These issues have been considered by the Environment Court, beginning with *Russell v Dunedin City Council* (C092/03) and more recently in *Gray v Dunedin City Council* [2023] NZEnvC 45. Where a proposal has the potential to undermine plan integrity by establishing an undesirable precedent, the Council may consider whether the proposal represents a ‘true exception’.
- [137] Consideration of precedent and plan integrity is particularly relevant where a proposed activity is assessed as being contrary to the objectives and policies of the operative district plan and/or the proposed district plan, and where those objectives and policies do not provide an express consent pathway for such activity. In such circumstances, it is necessary to consider whether granting consent would have implications beyond the specific proposal, or whether the outcome would remain confined to the particular facts of the case.
- [138] In this instance, I do not consider that the proposed activity would challenge the integrity of the 2GP. The proposal is relatively unique and small-scale, involves the adaptive re-use of a purpose-built mixed-use building, and would return the site closer to its original, long-standing function as a corner store. These characteristics are specific to the site and proposal, and would not be readily replicable across the residential zone.

- [139] While the policy framework generally assumes that commercial activities not expressly provided for in residential zones are incompatible with residential values and may pose a risk to the centres hierarchy, I consider that granting consent in this case would not undermine those policy assumptions in a broader sense. This conclusion is informed by the particular nature, scale, and neighbourhood-serving function of the activity, and should not be taken as support for other forms of commercial activity, such as professional offices or larger-scale uses, which may attract significantly greater patronage from outside the local area and raise different policy concerns.
- [140] On this basis, I consider that the proposal would not undermine plan integrity or set an undesirable precedent.

RECOMMENDATION

- [141] Having regard to the assessment above, I recommend that the application be granted in its entirety, subject to appropriate conditions.
- [142] If the Panel is not minded to grant consent for the café component, I consider that consent should nonetheless be granted for the visitor accommodation and the associated building alterations, noting that some of those alterations may become redundant as they are primarily intended to facilitate the café use.

REASONS FOR RECOMMENDATION

- [143] 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 no more than minor.
- [144] The cafe is considered to be inconsistent with the key relevant objectives and policies of 2GP, however I consider that the proposal will not lead to the effects of concern these provisions (Objective 5.2.1 and Policy 5.2.1.5) are seeking to manage, namely adverse effects on the character and amenity of residential zones from commercial activities, and effects on the centres hierarchy.
- [145] The proposal is considered to be a true exception because the proposal is small in scale and locally focused, involving the adaptive re-use of a purpose-built, mixed-use building. It would return the site closer to its original, long-standing function as a corner store. These characteristics are specific to both the site and the proposal, and would not be readily replicable across the wider residential zone or for other forms of commercial activity.
- [146] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Report prepared by:



Jane O'Dea
Associate Senior Planner

5 February 2026

Report checked by:



Phil Marshall
Senior Planner

9 February 2026

APPENDIX 1:

THE APPLICATION

APPENDIX 2:
SUBMISSIONS RECEIVED

APPENDIX 3:

COUNCIL OFFICER EVIDENCE

APPENDIX 4:

RECOMMENDED CONDITIONS

Water and Waste conditions

1. *The café premises and residential unit must have separate water connections. There is an existing water connection to the property which can be retained, if suitable.*
2. *An RPZ boundary backflow prevention device and meter must be installed on any non-domestic water connection servicing the site. A completed "Notification Of A New Boundary Backflow Prevention Device" form must then be supplied to DCC 3 Waters via email to rcmonitoring@dcc.govt.nz.*

Café

3. *Hours of operation are limited to 7am and 10pm. Staff may arrive and leave the site no more than 30 minutes either side of these times.*
4. *There must be no deliveries before 7am.*
5. *Deliveries must be undertaken from Russell St.*
6. *All deliveries must be carried out using vehicles no larger than a 99th Percentile Car.*
7. *No music may be played outdoors.*
8. *Live music is not permitted.*
9. *All external lighting must be directed away from any adjoining residential properties.*

Visitor accommodation

10. *The open space to the north-west of the building must be screened from 98 Arthur St prior to visitor accommodation commencing.*
11. *The consent holder must supply the following information in writing to the owners and occupants of 98 Russell St and 41 Russell St.*
 - a) *A description of the accommodation being provided at site.*
 - b) *Phone numbers for the site, and up-to-date details of a property manager who will be responsible for managing any complaints regarding the conduct of guests. The information must include the property manager's name, email address, and a suitable phone number/s for business hours and after-hours contact.*
12. *When any details in condition 2 change, the updated details must be provided to the addresses listed in condition 2.*
13. *Guests must not use outdoor areas between the hours of 10pm and 7am for socialising.*
14. *Amplified music must not:*
 - a) *Be played outdoors between the hours of 10pm and 7am; or*
 - b) *Be played at any time, indoors or outdoors, at a volume likely to disturb occupants of neighbouring sites.*
15. *Guests must be made aware of the requirements of conditions 13 and 14.*

Timber joinery

16. *Window and door joinery shall be timber unless an alternative material is approved by the Dunedin City Council's heritage advisor.*

Noise review

17. Pursuant to Section 128 of the Resource Management Act 1991, the noise requirements of this activity may be reviewed one year after the commencement of the activity, and annually thereafter, to ensure that any adverse effects on surrounding residential receivers are sufficiently managed.

Advice Notes

Noise and Light Spill

1. This consent does not authorise any breaches of the 2GP light spill or noise requirements (Rules 9.3.5 & 9.3.6). Should any aspect of this activity breach these rules then further resource consent is required.

Alcohol Licensing

- The application has spoken of an OFF licence for the sale of wine. This type of proposal is unlikely to meet the legal requirements for the granting of an OFF licence. The applicant is encouraged to consult with a member of the Alcohol Licensing team for further information.

Signage

3. All signage must comply with the 2GP signage requirements at all times (Rule 6.7.2 and Rule 6.7.3).

Water Services

4. Detail of the water supply application process can be found at: <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
5. Non-domestic water connections require an RPZ boundary backflow prevention device and a meter. Installation of a boundary backflow prevention device requires a building consent, or an exemption from a building consent ([Boundary-backflow-Building-Consent-exemption-form-editable.pdf](http://www.dunedin.govt.nz/building-consent-exemption-form-editable.pdf) ([dunedin.govt.nz](http://www.dunedin.govt.nz))) before the device is installed. Once the device is installed, 3 Waters must be advised so the installation can be approved. A “Notification Of A New Boundary Backflow Prevention Device” must be supplied to 3 Waters for any new RPZ. Further information is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
6. All aspects relating to the availability of water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by Fire and Emergency New Zealand.

Trade Waste

7. Trade waste requirements and an application form are available at:
<http://www.dunedin.govt.nz/services/wastewater/tradewaste>

Heritage New Zealand Pouhere Taonga Act 2014

8. The subject site is associated with pre-1900 human occupation. The development may require an Archaeological Authority under the *Heritage New Zealand Pouhere Taonga Act 2014*. Contact Heritage New Zealand Pouhere Taonga for further information infodeepsouth@heritage.org.nz