
TO: Hearings Committee

FROM: Robert Buxton, Consultant Planner

DATE: 26 August 2020

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2018-679
43 Cargill Street, Dunedin
Barry Craig and Victoria Ann Smail

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 26 August 2020. 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 below, I consider that the proposed development of four residential units with eight bedrooms in each unit will have adverse effects on neighbouring properties and the streetscape and is inconsistent with key objectives and policies of the district plans. As a result, I have concluded that the application should be declined.

DESCRIPTION OF PROPOSAL

- [3] The existing two storey building, garage and shed are proposed to be demolished, and the site redeveloped involving earthworks and erection of a three-storey multi-unit development containing four residential accommodation units with each unit consisting of:

- Ground floor containing laundry facilities, open plan kitchen dining and living area and two bedrooms each with an ensuite;
- Second and third floors each containing laundry facilities and three bedrooms each with an ensuite; and
- A rooftop garden.

Overall, each unit will contain 8 bedrooms, providing a total of 32 bedrooms on the site.

- [4] Provision has been made for the future inclusion of two lifts each to service two of the units. The lobby is located within the footprint of the existing garage on the site which will be demolished. Amenity spaces are provided by way of private court yards and balconies as well as the roof-top gardens. There is provision for a utility area for clotheslines for each unit. Nine on site car parks will be provided in the street level basement under unit 1 as well as a storage area for rubbish and recycling bins.

- [5] The applicant has requested a consent period of 10 years due to the size and location of this project as well as existing work flows within the construction industry.
- [6] A copy of the application and updated information is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [7] The site is located on the northern and uphill side of Cargill Street, between Scotland Street and Haddon Place.
- [8] The land slopes in approximately a northwest direction, and the rear of the site is approximately 10m higher than the street frontage (based on the contours of the DCC WEBmap). 45 Cargill Street and the sites on London Street that adjoin the rear of the applicant's site are at a higher elevation and 33 and 35 Cargill Street are at a lower elevation. Those properties directly across Cargill Street are at a lower elevation.
- [9] The site is legally described as Part Section 17 Block XX Town of Dunedin (held in Record of Title OT282/59). It is noted that the title is "limited as to parcels". The site to the west (45 Cargill Street) has been surveyed, and therefore that boundary can be taken to be correct, but all other boundaries, including the road frontage, are still subject to survey. The site is identified on the title as being 934m² and is approximately 18.6m wide and 50m long, although the frontage is 19.65m as the western side boundary with 45 Cargill Street has a dog leg approximately 6.7m from the road frontage.
- [10] The immediately surrounding properties consist of the following,:

Site	Area	Owner (from DCC Ratepayer info)
Adjoining Sites		
33 Cargill Street (Multi-unit)	425m ²	MB and JA Fraser
35 Cargill Street (Multi-unit)	576m ²	MB and JA Fraser
45 Cargill Street	568m ²	MJ Thomas
76 London Street	744m ²	KN Slaimankhel
78A-C London Street (Multi-unit)	942m ²	MW Sleeman, WP and KA Van Der Vliet, Heritage Trustee Company Ltd.
Across Cargill Street		
36 Cargill Street (Multi-unit)	607m ²	TJ and BA Day
38 Cargill Street (Multi-unit)	455m ²	Homely Holdings Ltd
40 Cargill Street (car park)	455m ²	St John South Island Region Trust Board

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [11] The application was received on 6 November 2018. The history of the application is outlined in the first five pages of the application. Essentially the application was rejected, but following discussion between the applicant and the DCC Senior Planner, it was accepted as being received on 6 November 2018. This date is important as it is the day prior to the release of decisions on submissions to the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). From the date of the release of decisions on submissions, all rules in the Proposed 2GP had legal effect.
- [12] Further discussion on the application ensued whereby it was determined that the application would be limited notified. Prior to the limited notification, clarification has been sought as to the infringements and this information was delayed partly due to health issues for the applicant. The application was limited notified to those properties that adjoin the site, but not those across Cargill Street due to the separation of the 20m wide street, and lower elevation of those sites.
- [13] On 19 August 2014, a subdivision consent (SUB-2014-107) was granted for the site that provided for the site to be subdivided into 4 lots, with a Right of Way access along the southern side boundary (beside 45 Cargill Street). That consent lapsed on 19 August 2019.

ACTIVITY STATUS

- [14] Dunedin currently has two district plans: the operative Dunedin City District Plan (the "2006 District Plan"), and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [15] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.
- [16] The applicant has a number of appeals on the Proposed 2GP, in particular on the density provisions and also the Height in Relation to Boundary (HIRB). These are discussed below, although the applicant at the hearing may wish to clarify the latest status of those appeals.

Dunedin City District Plan 2006 (2006 District Plan)

Land Use

- [17] The subject site is zoned **Residential 4** in the Operative District Plan. Cargill Street is classified as a Local Road in the Plan's Roading Hierarchy.
- [18] The proposal falls under the definition of Residential Activity. In accordance with Rule 8.10.1, residential activity is a permitted activity at a density of not less than 200m² of site area per residential unit.
- [19] The proposal has the following infringements of the 2006 District Plan standards:
- [20] Rule 8.10.2(i) requires buildings to be outside the 3m front yard and 1m side yard.
- The basement garage will occupy all of the front yard and the eastern side yard for a distance of approximately 5m along the side boundary, after which it will be below

existing ground level. Although the application refers to the structure along the front boundary as being a fence, it is stated in the application that there will be a deck over car parking spaces 1 and 6 and the aisle in between, which is therefore a building above ground level.

- The balconies on the front of the building intrude into the front yard, with the lower balcony infringing by 1.6m and the upper two balconies by 1m.
- The entrance lobby will occupy all of the front yard and all of the side western yard for a distance of approximately 6.4m along the side boundary. Although the applicant refers to the lobby being within the envelope of the existing garage, those existing use rights are considered to be lost.

[21] Rule 8.10.2(ii) requires buildings to be within a height plane of 72° (1 to 3 yard height ratio) originating from ground level on the boundary. Note it appears the balconies have been reduced in depth at the third floor level in order to meet the height plane.

- Along the front boundary the basement garage will infringe this fully, and the third level balcony and end of the Unit 1 north-south facing gable also infringe the height plane. (see THRU GRID B of Plan A-C2);
- Along the eastern side boundary, the basement infringes fully where it is above the existing ground level, and there is a slight infringement of the Unit 4 east-west gable roof (see THRU GRID E3 of Plan C3-E3);
- Along the eastern side boundary, the application mentions an infringement shown on Grid F, which appears to be very slight infringement for the eaves of the northern corner of Unit 4 (See ON GRID Q Back yard HPA of plan THRU GRID F).
- It also appears that the street frontage edge of some of the second floor side balconies will also infringe. This is because the cross sections do not correspond to the street frontage edge of the balconies. So where the cross sections show the balconies just complying with the Height Plane, this is at the middle of the balcony where the ground level is higher. At the street frontage edge of the balcony, the ground level is lower, so the balcony will infringe. This infringement is most marked for Unit 1 where the ground level changes the greatest.

[22] Rule 8.10.2(iii) requires buildings to be within a maximum height of 9m originating from ground level under the particular part of the building.

- The end of the Unit 1 north-south facing gable infringes the maximum height by approximately 1.1m vertically over a length of approximately 3.1m (see South West Elevation)
- The end of the Unit 3 east-west facing gable infringes the maximum height by approximately 0.24m vertically over a length of approximately 3.4m (see THRU GRID D1 of Plan C3-E3).
- The end of the Unit 4 roofline infringes the maximum height by approximately 0.40m vertically over a length of approximately 4.6m (see THRU GRID E1 of Plan C3-E3).

[23] Rule 8.10.2 (iv) Maximum site coverage of 60%.

- The total building area including the deck over the basement car park and the lobby is calculated by the applicant to be 70.86% site coverage.

[24] Rule 20.5.5(iii) requires one disability parking space (3.6m wide) for buildings accessible to people with disabilities when up to 10 total spaces are provided. It is noted that the proposal does include space for lifts.

- None of the proposed spaces shown on the plans meets the required width for a disability parking space, although it appears car park 9 does have sufficient space beside it to meet this standard. It is also noted that the applicant is providing an extra parking space more than the minimum required, so could meet this standard by removing one parking space.

[25] Rule 20.5.5(iv) requires a 6m queuing space for the car parking.

- As the basement garage is on the front boundary there is no queuing space.

[26] Rule 20.5.5(v) requires the parking space to meet the requirements in Appendix 20B, which for a residential activity requires 90° car parking spaces to be 2.5m wide, 5m deep and an aisle width of 6.2m.

- Clarification (iv)(b) in Appendix 20B requires the parking space depth to be increased by 0.3m where there is a permanent obstruction on the end of the parking space. This would apply to all spaces as they all face the basement wall. Based on Appendix 20B the total width of the car parking area (being car park depth plus the aisle width) would need to be 16.8m, whereas the distance between the basement side walls is 16.01m.

Note Clarification (iv)(a) in Appendix 20B requires the parking space width to be increased by 0.3m where there is a permanent obstruction on one side of the parking space. This would apply to car parks 1, 5 and 6 and would require a width of 2.8m. This width is met for car park 5 and exceeded for car parks 1 and 6.

[27] In accordance with Rule 8.10.4, as the proposal does not meet the above rules it is a **restricted discretionary** activity. The Council's discretion is restricted to the condition with which the activity fails to comply. In assessing these effects, the Council will have regard to the relevant matters in 8.13, and for Transport related rules, to the relevant matters in 20.6.1.

[28] Rule 17.7.3(i) permits earthworks involving retaining walls for cuts, that are setback from the boundary by the height of the retaining wall. This Rule applies as building consent has not been granted. The application drawings show that the earthworks will be approximately 6.1m maximum depth at approximately 1m from the western side boundary, and approximately 5.4m maximum depth along the eastern side boundary. Therefore it is assessed under Rule 17.7.4(ii) as a **controlled activity**.

These earthworks are controlled in respect of:

- (a) Design and engineering of retaining structures and earthworks.
- (b) Effects on the stability of land and buildings.
- (c) Effects on the surface flow of water and on flood risk.

Note the application states that the retaining walls will be included in the application for building consent. However, as no building consent has been granted at this point in time, the setback rule for earthworks must be considered in the resource consent application.

[29] Rule 17.7.3(ii) permits a change in ground level of 1.5m and a volume of earthworks up to 100m³. This Rule applies as building consent has not been granted. The application

drawings show that the earthworks will be up to approximately 6.1m depth and 1700m³ volume. Therefore it is assessed under Rule 17.7.5(ii) as a **restricted discretionary activity**.

The Council's discretion under this rule is restricted to:

- (a) Adverse effects on the amenity of neighbouring properties.
- (b) Effects on visual amenity and landscape.
- (c) Effects on any archaeological site and/or any cultural site.
- (d) Effects on the transportation network, caused by the transport of excavated material or fill.
- (e) Effects from the release of sediment beyond site boundaries, including transport of sediment by stormwater systems.
- (f) Cumulative effects relating to any of these matters.

For earthworks that were not granted an earthworks permit prior to 1 July 2010 and that do not form part of a project that was granted building consent on or after 1 July 2010, the Council's discretion will also extend to the following matters:

- (g) Design and engineering of retaining structures and earthworks.
- (h) Effects on the stability of land and buildings.
- (i) Effects on the surface flow of water and on flood risk.
- (j) Effects on underground utilities.

In assessing these effects, the Council will have regard to the relevant matters in 17.8.1 to 17.8.6.

- [30] Overall, in terms of the 2006 District Plan the land use is considered to be a **restricted discretionary activity**.

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

- [31] The subject site is zoned **Inner City Residential (ICR)** with an Archaeological Alert overlay. Cargill Street is classified as a Local Road in the Plan's Roading Hierarchy.
- [32] The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

City Wide Activities

- [33] The proposal falls under the definition of the following city-wide activities:
- Temporary activities – Construction.
 - Earthworks activities – Large Scale.
- [34] The temporary activity being construction, does not meet the development standards for earthworks i.e. thresholds for small -scale earthworks in this zone, and as such it considered to fall under the definition of large-scale earthworks: and is therefore a **restricted discretionary activity** under Rule 4.5.1.3. Matters that discretion is restricted to (and assessment guidance) are covered in Rules 4.7.2.1 and 4.7.2.2 (which links to the earthworks rules).
- [35] The temporary activity being construction, will most likely not meet the development standards for maximum height, height in relation to boundary, and boundary setbacks

that relate to temporary structures (e.g. scaffolding): and is therefore a **restricted discretionary** activity under Rule 4.5.1.3. Matters that discretion is restricted to (and assessment guidance) are covered in Rules 4.7.2.1 and 4.7.2.2 (which links to the relevant zone rules).

- [36] The proposed earthworks do not meet Rule 8A.5.1 thresholds for small-scale earthworks in a residential zone (1.5m change in ground level and 300m³ in volume). The application drawings show that the earthworks will be up to approximately 6.1m depth and 1700m³ volume. Therefore under Rule 8A.3.2.3 the earthworks are large scale which is a **restricted discretionary** activity and the matters that discretion is restricted to are effects on: visual amenity; amenity of surrounding properties; and the stability of land, buildings and structures (Rule 8A.7.2.1.a- c) and assessment guidance is also listed in Rule 8A.7.2.1.a- c.
- [37] The proposed earthworks do not meet Rule 8A.5.4.1.b for setback from the property boundary which requires earthworks involving retaining walls for cuts, to be setback from the boundary by the height of the retaining wall. The application drawings show that the earthworks will be approximately 6.1m maximum depth at approximately 1m from the western side boundary, and approximately 5.4m maximum depth along the eastern side boundary. Therefore under Rule 8A.5.4.2 the earthworks are a **restricted discretionary** activity and the matters that discretion is restricted to are effects on the stability of land, buildings and structures (Rule 8A.6.3.2) and assessment guidance is listed in Rules 8A.6.2.1 and 8A.6.3.2.
- [38] It is noted that the application states that the retaining walls will be included in the application for building consent. However, as no building consent has been granted at this point in time, the setback rule for earthworks must be considered in the resource consent application.

Management Zones

- [39] The proposal falls under the definition of Standard Residential. Under the Proposed 2GP, activities have both a land use activity and a development activity component.

Land Use

- [40] Standard Residential is a permitted activity under Rule 15.3.3.3.
- [41] The proposal does not comply with the following performance standards:
- [42] Rule 15.5.2.1.e requires a maximum development potential of 1 habitable room per 45m² of site area, which for the application site would provide a maximum of 20 habitable rooms. As a total of 32 habitable rooms are proposed (4 residential units with 8 habitable rooms each), under Rule 15.5.2.4 the proposal is a **non-complying** activity. Assessment Guidance is given in Rule 15.13.2.1 and 15.13.5.1. Note this performance standard is under appeal and it appears from a consent memorandum that there has been agreement between the Council and appellant (the applicant) to amend the rule so that where the density is greater than one habitable room per 45m², but less than 30m², the application would be a restricted discretionary activity rather than non-complying. The judge has not made the consent order as it is not convinced that the rule will not be impacted by other proceedings. The amendment would still result in the current application being non-complying under the Proposed 2GP as the density of the current application is 29.2m². Regardless of any agreed amendments, the activity status of this application remains as a restricted discretionary activity due to Section 88A of the RMA.

[43] Rule 6.6.1.1.a.i requires 90° car parking spaces to be 2.5m wide, 5m deep and an aisle width of 5.8m. Note for standard residential activities there is no requirement for a mobility parking space.

- Rule 6.6.1.1.c.ii.2 requires the parking space depth to be increased by 0.3m where there is a permanent obstruction on the end of the parking space. This would apply to all spaces as they all face the basement side walls. The total width of the car parking area (being car park depth plus the aisle width) would need to be 16.4m, and the distance between the basement side walls is 16.01m. Under Rule 6.6.1.1.f contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are effects on the safety and efficiency of the transport network (Rule 6.10.5.1) and assessment guidance is listed in Rules 6.10.2.1 and 6.10.5.1.

Note Rule 6.6.1.1.c.ii.1 requires the parking space width to be increased by 0.3m where there is a permanent obstruction on one side of the parking space. This would apply to car parks 1, 5 and 6 and would require a width of 2.8m. This width is met for car park 5 and exceeded for car parks 1 and 6.

[44] Rule 15.5.11.1.a.iv requires a minimum outdoor living space of 45m² for each unit, with a minimum dimension of 3m (1.8m for balconies) and directly accessible from a principal living area. From the ground floor principal living areas, the outdoor living spaces for Units 2, 3 and 4 are each approximately 40m², although Units 2 and 3 include some area that does not meet the minimum dimension of 3m. Unit 1 would meet the requirements as there is a deck over car parking space 1. Although a rooftop garden and balconies are provided, the balconies are not 1.8m deep, being between 0.4-1.2m, and the balconies and rooftop gardens are not directly accessible from the principal living area. Under 15.5.11.1.d contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on on-site amenity for residents (Rule 15.10.3.10), and assessment guidance is listed in Rules 15.10.2.1 and 15.10.3.10.

Development Activity

[45] Rule 15.3.4.3 lists all new buildings of greater than 300m² footprint, and all multi-unit development in the ICR as a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on: accessibility; the safety and efficiency of the transport network; surrounding sites' residential amenity; and streetscape amenity and character (Rules 15.11.2.1 and 15.11.3.1), and assessment guidance is listed in Rules 15.11.2.1 and 15.11.3.1.

[46] The proposal does not comply with the following performance standards:

[47] Rule 15.3.4.23 requires parking and access to meet the parking, loading and access standards. The parking area does not provide a queuing length of 6m (Rule 6.6.1.3.a.i), and under Rule 6.6.1.3.b contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on the safety and efficiency of the transport network (Rule 6.10.5.1), and assessment guidance is listed in Rules 6.10.2.1 and 6.10.5.1.

[48] Rule 15.6.6.1.a.iv Height in Relation to Boundary (HIRB) requires all buildings and structures to within a plane of 45° (or 55° if the grounds slopes from the building platform towards the boundary by 6° or more) measured 3m above the ground level at the boundary, except that for the first 16m of building from the road frontage which can be within a plane of 45° measured 6.5m above the ground level at the boundary, provided

that buildings on the remainder of the site are setback by at least 2m. The proposal will infringe the HIRB once it is more than 16m from the road frontage by varying amounts on both the eastern and western side boundaries and rear boundary. These infringements are shown as hatched areas on plans Thru A-C2, Thru C3-E3 and Thru F. Under Rule 15.6.6.1.b contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on: surrounding sites' residential amenity; and neighbourhood residential character and amenity (Rule 15.10.4.7), and assessment guidance is listed in Rules 15.10.2.1 and 15.10.4.7. Note these rules have been appealed.

[49] Rule 15.6.7.1 Location and Screening of Car Parking requires all parking and access to not occupy more than 50% of the area of the front yard, which is exceeded. Under Rule 15.6.7.3 contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on neighbourhood residential character and amenity (Rule 15.10.4.8), and assessment guidance is listed in Rules 15.10.2.1 and 15.10.4.8.

[50] Rule 15.6.10.1.c requires a maximum site coverage of 60% and maximum impermeable surface of 80%. The total building area including the deck over the basement car park and the lobby is calculated by the applicant to be 70.86% site coverage. Under Rule 15.6.10.3 contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on: on-site amenity for residents; neighbourhood residential character and amenity; and efficiency and affordability of infrastructure (Rule 15.10.4.10), and assessment guidance is listed in Rules 15.10.2.1 and 15.10.4.10.

[51] Rule 15.6.13.1.a.iv requires all buildings and structures to be setback 3m from the front boundary and 1m from the side or rear boundary.

- The basement garage will occupy all of the front setback and the eastern side setback. Although the application refers to the structure along the front boundary as being a fence, it is stated in the application that there will be a deck over car parking spaces 1 and 6 and the aisle in between, which is therefore a building.
- The balconies on the front of the building intrude into the front yard, with the lower balcony infringing by 1.6m and the upper two balconies by 1m.
- The entrance lobby will occupy all of the front setback and all of the side western setback. Although the applicant refers to the lobby being within the envelope of the existing garage, those existing use rights may be lost (see paragraph 52 below).

Under Rule 15.6.13.1.b contravening this standard is a **restricted discretionary** activity and the matters that discretion is restricted to are the effects on: surrounding sites' residential amenity; and neighbourhood residential character and amenity (Rule 15.10.4.1), and assessment guidance is listed in Rules 15.10.2.1 and 15.10.4.1

[52] Rule 15.3.2.5 states that development activities (i.e. the existing garage) that are lawfully present at the time any relevant rules in this Plan have legal effect, are not managed by those rules (the rules do not apply to existing lawfully established development activities). This rule is open to interpretation, although it would appear that the setback infringements of the lobby within the envelope of the existing garage noted above would not apply. However, for the avoidance of doubt the infringement will be considered, although it is noted that it may be somewhat academic as this is a small portion of the total development.

Overall Status under both the 2006 District Plan and Proposed 2GP

- [53] Section 88A of the Resource Management Act determines that when an application has been lodged, the type of activity remains unaltered despite decisions on a proposed plan being notified. The application was lodged on 6 November 2018, the day before the release of decisions on 7 November 2018. Accordingly, the type of activity for the application is determined by the type of activity under the 2006 District Plan, which is a **restricted discretionary** activity.
- [54] Although Section 88A determines the activity status, Section 88A (3) states that “any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b) of the Resource Management Act”.
- [55] There is the issue that Proposed 2GP rules not subject to appeal are to be treated as operative (Section 86F of the RMA). Once a rule becomes operative it could be argued that Section 88A does not apply. However, based on Environment Court Decision No. [2018] NZEnvC 233 (paragraph 22), Section 88A is considered to apply until the rules are made operative under clause 20 of the First Schedule of the RMA.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (“NESCO”) (“NESCO”)

- [56] 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 NES-CS 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.
- [57] This matter was given consideration for the site in subdivision consent SUB-2014-107, where it was stated:
- The applicant’s agent has undertaken a search of Dunedin City Council records in order to determine whether or not the NES is likely to be relevant, as provided for by Regulation 6 of the NES. He advises that the HAIL report was obtained from Council with confirmation the site has been used for residential activity since 1878. There is no evidence of any HAIL activities having taken place on the site. It is therefore reasonable to conclude that it is unlikely there is any contaminated soil on the site that might affect human health. It is accepted that the NES is not applicable to this application.*
- [58] Given that there will have been no change in land use relevant to protection of human health since the HAIL report (HAIL-2014-95), being continued residential activity, it is considered the NESCS does not apply.

NOTIFICATION AND SUBMISSIONS

- [59] The application was limited notified to all those parties the Council considered affected by the proposal, being the immediate adjacent properties, on 1 July 2020.
- [60] Submissions closed on 31 July 2020. Four submissions were received by the close of the submission period and all were opposed.

[61] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Address	Support/ Oppose	Summary of Submission	Wish to be heard?	Delegate to commissioners
Pete and Gina Franklin	35 Cargill Street, Unit 7	Oppose	Concerned about: Construction noise over a prolonged period, as submitter's are shift workers with an infant and their bedroom is approximately 4m from the site. Request noise is minimised; Insufficient car spaces. Request onsite parking for at least half the new residents; and Lack of queuing space for car parking, which already occurs at 35 Cargill Street, will adversely affect traffic flow and pedestrian safety. Request onsite queuing space be provided.	No, but would present a joint case with others.	No
Julie Ann Brosnahan	Owner of 33 and 35 Cargill Street	Oppose	Concerned about: Number of rules not being complied with, including earthworks; Disturbance to tenants from noise and dust during construction; Excessive height would deny sun to other properties; Large group of people living on site will increase noise and rubbish, as currently happens at corner of Cargill and Haddon Streets, and also in campus area such as MacKenzie Mews, which erodes the character of the city; and In past applicant has not assisted with maintenance of vegetation so concerned about damage to retaining walls and fences and the replacement of such may block neighbouring driveway. Requests application be declined.	No	No
Michael John Thomas	Owner of 45 Cargill Street	Oppose	Concerned about: Breach of Height Plane; Breach of site coverage; Breach of density; Adverse effects on sunlight and privacy; and Breach of many rules which will severely affect value and liveability of property. Requests application meet the rules.	No	Yes
Raphael Richter-Gravier	35 Cargill Street, Unit 4	Oppose	Concerned about: Height and scale of development; Construction noise and dust and the effect on pet bird; and Possible collapse of retaining wall blocking driveway and parking for 35 Cargill Street. Would like to know why we have height restrictions if people can exceed them.	No	No

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[62] 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

- [63] 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.
- [64] In this situation, a permitted activity, under the most restrictive provisions of the 2006 District Plan and the Proposed 2GP, would involve: earthworks with a maximum change in ground level of 1.5m and a maximum volume of 100m³, involving retaining walls that have been granted a building consent or are setback from the site boundary by its height; the construction of four residential units with up to 20 habitable rooms and a maximum height of 9m; and a minimum of 8 car parking spaces and meeting all other performance standards, and where the performance standards differ between the 2006 District Plan and the Proposed 2GP, the most restrictive performance standard (including the Height plane or HIRB).
- [65] The existing and reasonably foreseeable receiving environment is made up of:
- The existing environment and associated effects from lawfully established activities;
 - Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
 - The existing environment as modified by any resource consents granted and likely to be implemented; and
 - The environment as likely to be modified by activities permitted in the district plan.
- [66] For the subject site, the existing and reasonably foreseeable receiving environment comprises residential activity in the form of a single and multi-unit residential activity.
- [67] For adjacent land, the existing and reasonably foreseeable receiving environment comprises residential activity in the form of single and multi-unit residential activity.
- [68] It is against these that the effects of the activity, beyond the permitted baseline, must be measured.

Assessment of Effects

- [69] This section of the report assesses the following environmental effects in terms of the relevant assessment matters of both plans:
- Transportation (2006 District Plan: 20.6.1, 20.6.2, 20.6.5, 20.6.10. Proposed 2GP: 6.10.2.1, 6.10.5.6, 15.11.2.1.a, 15.11.2.1.b);

- Earthworks and Construction (2006 District Plan: 17.8.1, 17.8.2, 17.8.3, 17.8.5, 17.8.6. Proposed 2GP: 4.7.2.1, 4.7.2.2, 8A.6.2.1, 8A.6.3.2, 8A.7.2.1);
- Infrastructure (2006 District Plan: 8.13.10. Proposed 2GP 15.13.2.1 and 15.13.5.1);
- On-site amenity for residents (Proposed 2GP: 15.10.2.1 and 15.10.3.10);
- Surrounding sites' residential amenity (2006 District Plan: 8.13.1, 8.13.3, 8.13.4, 8.13.5, 8.13.6. Proposed 2GP: 15.10.2.1, 15.10.4.1, 15.10.4.7, 15.10.4.8, 15.10.4.10, 15.11.2.1, 15.11.3.1, 15.13.2.1 and 15.13.3.1); and
- Streetscape amenity and character (2006 District Plan: 8.13.3, 8.13.4, 8.13.5, 8.13.6. Proposed 2GP: 15.11.2.1.d).

[70] The following parts of this report represent my views on the effects of the proposal, having regard to the application, the submissions, and my visit to the site. Comments by Council's Officers are contained in Appendix 3.

Transportation (2006 District Plan: 20.6.1, 20.6.2, 20.6.5, 20.6.10. Proposed 2GP: 6.10.2.1, 6.10.5.6, 15.11.2.1.a, 15.11.2.1.b);

[71] The Planner - Transport considers the effects of the proposed development on the transportation network to be less than minor, subject to suggested conditions and advice notes. The Planner – Transport has assessed the application under the Proposed 2GP rules only, and I consider this approach is valid, as the Proposed 2GP rules relating to Transportation relevant to this application are not appealed.

[72] The Planner – Transport considers the access to the site: is of suitable width; will have acceptable sight lines; will be a suitable distance from road intersections; and notes that the applicant advises that gradient requirements for the access can be met.

[73] Regarding parking and manoeuvring on site, the Planner – Transport considers the number and layout of parking spaces is acceptable. He notes that the dimensions of the parking spaces are less than the minimum (as outlined above in paragraph 43), but considers the design to be acceptable, particularly as the users will be the residents who will become familiar with the layout. However, he suggests a condition that the aisle be extended 1m beyond car park 5 to assist manoeuvring from that parking space as it is located beside the end wall.

[74] In terms of the lack of queuing space within the site, the Planner – Transport considers this would not result in any significant adverse effects due to the low volumes of traffic, particularly as the site is close to the town centre.

[75] I generally concur with the Planner – Transport's assessment. I note that the widths of most parking spaces are greater than the minimum required. Although he suggests that the aisle by car park 5 be extended by 1 m, I note that car park 5 is additional to the minimum number of car parks required and therefore can be considered optional. I consider it may be more useful for this space to be used for parking bicycles. As discussed later in this report, this space may also need to be used for solid waste bins.

[76] In terms of the lack of queuing space, which has been raised in submissions, I agree with the Planner – Transport the level of traffic will be low, so the potential for cars arriving and leaving to coincide is considered to be very infrequent. I also note that if the access is 6m wide as shown on the plans, there would be room for cars to pass within the aisle onsite.

[77] One submitter has requested that there be sufficient parking spaces for half the residents on the site. This would mean at least 16 spaces. The Proposed 2GP rules (and the 2006

District Plan) require a minimum of 8 car parks. The parking requirements of the Proposed 2GP for the Inner City Residential zone reflect the expectation that future inner city living will result in less demand for on-site car parks. I also note that the National Policy Statement on Urban Development 2020 has required the DCC to remove the minimum number of car parks from the district plan.

- [78] If the Hearings Committee do consider granting this consent, I consider a condition is required to state that any on-site parking spaces provided must be solely for the use by residents. As mentioned above, I also consider that if car park 5 is not required, that this space be made available for bicycles and/or solid waste bins.
- [79] Overall I consider the proposal will have less than minor adverse effects on the transportation system.

Earthworks and Construction (2006 District Plan: 17.8.1, 17.8.2, 17.8.3, 17.8.5, 17.8.6. Proposed 2GP: 4.7.2.1, 4.7.2.2, 8A.6.2.1, 8A.6.3.2, 8A.7.2.1)

- [80] Council's Consultant Engineer has assessed the site regarding hazards. They have identified that there are no hazards identified in the hazards register for the site, and that the underlying geology consists of second main eruptive phase volcanics and that the site is sloping by up to 15 degrees. They recommend that the application not be declined on the ground of known natural hazards, and suggest conditions and advice notes. They note that there are potential instabilities of concern regarding temporary stability of the cuts and that controls are required to ensure the proposed works does not affect the stability of neighbouring properties.
- [81] The Consultant Engineer notes the proposed building and associated earthworks are likely to directly affect the neighbouring properties and structures. There is a proposed 2m high retaining wall less than 1 metre from the boundary and 1.5 metres from an adjacent structure. Another location has a 6m cut within 1m of the boundary. Best practice earthworks methodologies may be insufficient to deal with potential temporary stability hazards associated with the proposed works. Professional earthworks methodology advice and geotechnical design considerations are required to ensure the proposed works does not negatively affect the neighbouring lots. This may involve controls such as survey monitoring of adjacent lots and structures.
- [82] In response to the submissions, the Consultant Engineer comments that from purely a hazards perspective, they consider that the hazards associated with these earthworks are related to temporary stability and will be engineerable with the correct advice and design by appropriately qualified engineers. The cost associated with ensuring temporary stability of the site may be inhibitive, but that is a decision for the developer. The developer has full responsibility to ensure that no neighbouring land or structures are affected, and is fully liable for any damages and reinstatement. Use of neighbouring land to access and aid construction is possibly up to the neighbour's discretion.
- [83] I concur with these statements regarding hazards, and note that the earthworks beside 45 Cargill Street will involve significant cuts over the first 15m of the site from the front boundary. Those cuts close to 45 Cargill Street may affect the potential future development of 45 Cargill Street, if the retaining walls do not provide for potential surcharge. That surcharge could result from a future driveway along the boundary, or a 7.5m high building within 1m of the side boundary and within 16m of the road frontage (based on the current Proposed 2GP HIRB rule).
- [84] Regarding the submitter's concerns about the existing retaining wall alongside 35 Cargill Street, I note that in the plans provided, the first 15m of the existing concrete crib

retaining wall is to be removed and replaced by a masonry wall for the basement car park. This replacement wall would presumably improve the longevity of the retaining along that portion of the side boundary. However, there may be legal implications if the existing retaining wall is fully within 35 Cargill Street, and as noted by the Consultant engineer, it may be up to the neighbour's discretion regarding access to it.

- [85] In terms of noise from the earthworks and construction, I note that the bulk of the earthworks will be within the first 15m from the road frontage. The dwelling at 45 Cargill Street is approximately 20m from the road frontage, and the multi-unit residential building on 33 Cargill Street is separated by an approximately 3.1m wide driveway to 35 Cargill Street. Therefore, there is some separation of the bulk of the earthworks from existing dwellings. The applicant states that the earthworks will be spread over three stages of 2, 4 and 8 weeks duration. I consider this period for earthworks, while disturbing for the neighbours, can be appropriately managed. Council's Environmental Health Officer has suggested that construction should only occur between the hours of 0730 and 1800 over weekdays, excluding public holidays, and the long term duration construction noise limits should apply, and I concur.
- [86] In terms of visual effects of the earthworks, once the development is built the extent of the earthworks will be essentially hidden by the structures.
- [87] I do note that these earthworks are significantly greater than the permitted activity volumes and change in ground level. However, the sites in this area are challenging, and I note that there would appear to have been significant earthworks required for development of other sites in the area.
- [88] Regarding potential adverse effects of the earthworks, if the Hearing Committee consider granting the application, then standard conditions regarding sedimentation, erosion, dust, traffic management and protection of roads from soils and vehicle damage, as well as conditions requiring specific engineering design, are suggested. In terms of adverse effects of the overall construction (including earthworks) , as noted above, the Council's Environmental Health Officer has suggested restrictions on hours and noise limits to address these effects, and I agree with those conditions.

Infrastructure (2006 District Plan: 8.13.10. Proposed 2GP 15.13.2.1 and 15.13.5.1)

- [89] The development of the site has been considered by Council's 3-Waters Department. They have undertaken hydraulic modelling of water, wastewater and stormwater. They identify that there are no issues with the water supply, but there is surcharging of the wastewater and stormwater systems downstream of the site. Although they suggest a condition regarding water supply connections, this can be addressed through the building consent process. They also suggest a condition regarding erosion and sediment control in order to address effects on the stormwater system and ultimate discharge, which is covered by the standard conditions regarding sedimentation, erosion, dust mentioned in paragraph 88 above.
- [90] In regard to stormwater the 3-Waters Department recommends that a stormwater management plan will be required. While this would address their concerns I do not consider this is a matter for consideration under the restricted discretionary activity status, provided the maximum impermeable surface area performance standard of 80% is met. The application states that amenity areas will be permeable to ensure that the impermeable site coverage remains under 80% of the site area. If the Hearing Committee consider granting the application, I suggest that an advice note be included noting the maximum impermeable area of 80% must be met and that a Stormwater Management

Plan may be required as part of the building consent process due to the existing downstream stormwater system being under capacity for a 10 year event.

- [91] In regard to wastewater, the 3-Waters Department does not support the application due to the proposed 32 habitable rooms, when the Proposed 2GP permitted activity limit is 20. One of the reasons for limiting the number of habitable rooms is to ensure the infrastructure capacity is not exceeded. I note the 2006 District Plan definition of Residential Unit states the following "... excludes units where staff provide for more than 18 residents. Staff living on the site are not included in this limit". While the proposal includes eight large bedrooms in four units, even with two people per room, this would amount to less than the 18 residents. However, given that there is already surcharge occurring, the additional 12 habitable rooms is considered to result in cumulative and more than minor adverse effects on the wastewater infrastructure. The 3-Waters Department suggest that if the Hearing Committee consider granting the application, then there should be a condition to implement water saving devices so as to reduce the volume of wastewater.
- [92] I concur with the 3-Waters Department that the additional 12 habitable rooms will add to the existing problem for wastewater services downstream. I also consider, given the size of the bedrooms being equivalent to a studio flat, that the suggested condition also include a statement that the bedrooms must not include any kitchen facilities such as dishwashers or sinks. The Inner City Residential (ICR) zone is one where there is expected to be further redevelopment of sites for multi-unit development, and allowing the current proposal would not assist in consistent administration of the Proposed 2GP. I also note that although the Proposed 2GP density rule has been appealed, the proposed consent memorandum filed by the parties would still require consideration of effects on the efficiency and affordability of infrastructure.

On-site amenity for residents (Proposed 2GP: 15.10.2.1 and 15.10.3.10)

- [93] Although the proposal does not meet the minimum area, dimensions and access for outdoor living areas, these infringements are considered to be acceptable as the proposal includes balconies for the bedrooms (albeit some being only 0.4m deep and none meeting the minimum depth of 1.8m) and, although not directly accessible from the principal living area, reasonably sizeable rooftop gardens are proposed of approximately 59m² for Unit 1, 76m² for Unit 2, 57m² for Unit 3, and 45m² for Unit 4. I also note that the size of the bedrooms is large, all appear to be between 30-35m² in area (inclusive of the ensuites) . These bedrooms are similar in size to studio units, so will provide good individual space, noting that the shared combined kitchen/dining/living room on the ground floor is relatively small (approximately the same size as one bedroom) for up to potentially 16 people (if there were 2 people per bedroom).
- [94] Council's Environmental Health Officer has commented on inter-tenancy noise and noise from the street, and has suggested advice notes. I agree and consider these matters should be addressed through the building consent process. Although outside any consent process, obligations on the landowner under Residential Tenancies Act would also have a bearing on this matter.
- [95] Although it is not a requirement of either plan, I note that the lobby entrance does provide a suitable entrance to the development directly from the street, rather than residents and visitors accessing the site through the garage.

Surrounding sites' residential amenity (2006 District Plan: 8.13.1, 8.13.3, 8.13.4, 8.13.5, 8.13.6. Proposed 2GP: 15.10.2.1, 15.10.4.1, 15.10.4.7, 15.10.4.8, 15.10.4.10, 15.11.2.1, 15.11.3.1, 15.13.2.1 and 15.13.3.1)

[96] The concerns of the submitters regarding residential amenity includes:

1. parking and access concerns;
2. construction noise and dust;
3. work on existing retaining wall;
4. adverse effect on sunlight and privacy;
5. noise and rubbish from future residential; and
6. an overall concern about the number of infringements.

Points 1, 2 and 3 have been addressed under Transportation, Earthworks and Construction, except for the adverse effects of temporary structures such as scaffolding.

[97] In terms of sunlight and privacy, I consider that as a new development, there should be good reason why the permitted activity performance standards for maximum height, height plane or height in relation to boundary (HIRB) and site coverage cannot be met. In my opinion this has not been sufficiently addressed. Also, the development appears to have fully maximised the 2006 District Plan building envelope, which includes truncating of some of the roof gables and balconies in order to fit within this envelope. This maximising of the development gives little compensation for any of the infringements, such as providing areas where the building is significantly less than the maximum envelope, or is within the maximum site coverage, in order to mitigate the infringements.

[98] Where the building is shown on the plans to be just within the envelope, this relies on the ground level and location of the boundary being accurately known. The matter of the site being "limited as to parcels" has been raised with the applicant and their surveyor has advised that all boundary corners have been surveyed, and states there is a very slight risk due to the limited title that the boundaries will not be as previously surveyed, although in his experience this is highly unlikely. I note the boundary location and ground level accuracy will also be critical given that the proposal is designed to be just within some performance standards. If the Hearing Committee consider granting the application, then conditions would be required for a surveyor to accurately measure the existing ground levels within the site prior to any development, and also confirm at foundation stage and at the framing stage that the building has been built so that infringements than shown on the plan have not been exceeded.

[99] Council's Urban Designer has commented on the shading diagrams provided by the applicant as further information. He notes that there are several northeast facing windows of the dwelling at 45 Cargill Street that could be affected from shading of the morning sun. Council's Urban Designer considers that additional shading diagrams which show the extent of additional shading at different times of the day and year (Spring/Autumn equinox) would be helpful in assessing effects on all neighbouring properties and would also illustrate the effects of the topography of the area. The applicant should consider providing this information in expert evidence to be

circulated prior to the hearing. This information should assess the height plane/HIRB rules of both the 2006 District Plan and the Proposed 2GP.

- [100] I note that any maximum height and height plane/HIRB infringements on the front of the building will have little shading effect on the neighbouring properties. However, I consider the infringements of the height plane/HIRB rules may also adversely affect the sunlight for the outdoor living space as well as the windows of 45 Cargill Street. It is noted that the properties at 33 and 35 Cargill Street do not have obvious outdoor living space, but the western side yard entrance ways of 33 Cargill Street and the western side yard outdoor area of 35 Cargill Street may be affected by the infringements of the height plane/HIRB.
- [101] Given the maximisation of the development, the construction process will result in scaffolding that will exceed the height plane/HIRB. It is not certain how long this may occur for but it will be for a reasonable length of time. If the Hearing Committee consider granting the application, I suggest there should be a condition limiting the length of time for scaffolding above the first floor level.
- [102] The Council's Urban Designer notes that the effects of site coverage will be most noticeable for the neighbouring residents in Cargill Street. He does note that the development largely sits within the 9m maximum height plane when viewed from neighbouring properties, and that the modulation does manage the visual bulk. He notes that while these factors will help to limit potential adverse amenity effects, it is considered that the proposed development will result in some residual adverse effects associated with building dominance. He also notes there will also be an associated loss of privacy, due to the extent of glazing, particularly on the north-eastern face of the building.
- [103] Council's Environmental Health Officer has commented on concerns about noise from residents. They note that the resident may be students, which can be a regular cause of noise complaints, and they suggest a condition preventing use of amplified music on the rooftop garden, as well as restricting the hours of use of the balconies. The Urban Designer comments that further detail regarding the lighting of the rooftop garden would be helpful to assess the effects of associated light spill. While I understand these concerns, I consider the concerns could also arise from a complying development with rooftop gardens, and therefore consider that such conditions or additional information is not necessary as long as the development will meet the performance standards for noise and light spill, and the usual noise control methods would need to apply if there was any disruptive behaviour. However, these concerns can be included as advice notes, if the Hearing Committee consider granting the application. Although outside any consent process, obligations on the landowner under Residential Tenancies Act would also have a bearing on this matter.
- [104] Council's Environmental Health Officer and Council's Contract Coordinator for Waste and Environments Solutions have commented on concerns about solid waste management. They note that the waste storage area identified in the Amenities and Services Site Plan may not be of sufficient size, as the number of residents on site may result in additional recycling bins being required and also in future if rubbish bags are replaced with bins. This can also lead to clutter from bins on the street. The district plans do not have specific provisions addressing this concern, but it is a matter the applicant may wish to consider, including considering using a private collection process. However, the size of each residential unit, with 8 large bedrooms in each unit which could easily accommodate two people per bedroom, does exacerbate this concern.

- [105] In terms of the concern about the number of infringements, as noted above I consider that as a new development, there should be good reason why the permitted activity performance standards such as height, height plane/HIRB, site coverage, yards/setback and density cannot be met. Primarily it seems that the applicant wishes to maximise the development on the site. This maximisation includes the location of the garages under the residential unit and within the front yard (which results in extensive earthworks), and also the truncating of some of the roof gables and balconies in order to meet the 2006 District Plan height plane.
- [106] The HIRB rule of the Proposed 2GP has been appealed, and I understand that this appeal is to be considered at a later date in the Proposed 2GP appeals process. Given that the HIRB rule has been appealed, lesser weight should be given to that rule compared to the 2006 District Plan. I note that the development is generally within the maximum height and the side elevations do provide interest, however, the development appears to have fully maximised the 2006 District Plan building envelope with little compensation for any of the infringements, such as including areas where the building is significantly less than the maximum envelope, or is within the maximum site coverage, in order to mitigate the infringements. I also note that although lesser weight is to be given to the HIRB rule of the Proposed 2GP, it must still be considered, along with the other rules of the Proposed 2GP, including the density rule. While I support maximising medium density development close to the central city, overall I consider the adverse effect on the neighbouring properties to be more than minor.

Streetscape amenity and character and general urban design (2006 District Plan: 8.13.3, 8.13.4, 8.13.5, 8.13.6. Proposed 2GP: 15.11.2.1.d)

- [107] Council's Urban Designer has commented on the proposal. In terms of maximum height and height plane/HIRB infringements on the street frontage, the Urban Designer considers these will have relatively minor effect, and agrees with the applicant that the glass balustrades will not lead to notable adverse visual effects. The Urban Designer also notes the design of the building, with a street oriented gable and steep pitched roof is sympathetic to the architecture of nearby dwellings, and that aspect contributes positively to the public face of the development. He also notes that the street facing façade has a large expanse of wall, this wall being the southern wall of bedrooms 1, 4 and 7 of Unit 1. He suggests that a redesigned floor layout with the ensuites of these bedroom rotated to mirror the adjoining bedroom would provide scope to add façade/window detailing on the street facing façade to add interest.
- [108] The Urban Designer comments on the building along the street frontage. He notes that although the height of this wall is based on a datum it appears that it will present a wall up to approximately 3.7m above the footpath, which could potentially lead to adverse amenity streetscape effects associated with tall, dominating structures at the street frontage. He notes that while there are a number of unsympathetic front boundary treatments in the vicinity, that these should not be emulated on the applicant's site. He also notes that car parking and access will be in excess of 50% of the front yard, which breaches the Proposed 2GP rule.
- [109] Overall the Urban Designer considers that the combined effect of this boundary treatment (with the potential addition of a deck-top balustrade) and the large blank façade treatment on the south-eastern side of the building has the potential to negatively affect streetscape amenity values.
- [110] I concur with the Urban Designer and note that the design would make it difficult to achieve consistent administration of the district plan, noting that both district plans require a 3m front yard unobstructed by building.

Effects Assessment Conclusion

- [111] I consider that overall the proposed multi-unit residential development will have more than minor adverse effects on neighbouring properties and streetscape.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [112] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council 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 on the environment that will or may result from allowing the activity.
- [113] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [114] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the 2006 District Plan and the Proposed 2GP were taken into account in assessing the application.

2006 District Plan

- [115] Although many of the objectives and policies of the 2006 District Plan may be deemed inoperative, as there are some appeals against the Objectives and Policies of the Proposed 2GP, the following have been considered as a conservative approach:

Sustainability

	<u>Objective / Policy</u>	<i>Is the proposal Consistent or Inconsistent with the Objectives and Policies?</i>
Objective 4.2.1	Enhance the amenity values of Dunedin.	The amenity values of the surrounding area are considered to not be maintained or enhanced due to the overall bulk of the building exceeding height, height plane, yard and site coverage standards. I consider the proposal is inconsistent with the objective and policy.
Policy 4.3.1	Maintain and enhance amenity values.	
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area	Although the objectives and policies are more focussed towards greenfield development, as noted by the Council's 3-Waters department, the wastewater and stormwater services downstream are experiencing surcharge and additional demand contributes to cumulative adverse effects on those services. I consider the proposal is in general inconsistent with these objectives and policies.
Objective 4.2.3	Sustainably manage infrastructure.	
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	
Policy 4.3.3	Promote the renovation and redevelopment of those sites within existing urban areas where there is under-utilisation of urban service infrastructure.	
Policy 4.3.5	Require the provision of infrastructure services at an appropriate standard.	

Objective 4.2.5	Provide a comprehensive planning framework to manage the effects of use and development of resources.	This land is zoned Residential 4 and is described as having the highest concentration of multi-unit development and has the highest site coverage with some properties covering up to 60%. The proposal exceeds this limit by 10%. The proposal neither consistent or inconsistent with the objective and policies, but is considered inconsistent with the zone description.
Policy 4.3.7	Use zoning to provide for uses and development which are compatible within identified areas.	
Policy 4.3.9	Require consideration of those uses and developments which: (a) Could give rise to adverse effects. (b) ...	
Policy 4.3.10	Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	

Residential

	<u>Objective / Policy</u>	<i>Is the proposal Consistent or Inconsistent with the Objectives and Policies?</i>
Objective 8.2.1	Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied or mitigated.	The amenity values of the surrounding area are considered to not be maintained or enhanced due to the overall bulk of the building exceeding height standards, height plane, yard and site coverage standards.. I consider the proposal is inconsistent with this objective and policy.
Policy 8.3.1	Maintain or enhance the amenity values and character of residential areas.	
Objective 8.2.4	Ensure that the existing urban service infrastructure servicing residential areas is sustained for the use of future generations.	Although the objectives and policies are more focussed towards greenfield development, as noted by the Council's 3-Waters department, the wastewater and stormwater services downstream are experiencing surcharge and additional demand contributes to cumulative adverse effects on those services. I consider the proposal is inconsistent with this objective and policy.
Policy 8.3.8	Within the urban/rural fence, provide for urban settlement in those areas where the urban service infrastructure can absorb additional development.	

Earthworks

	<u>Objective / Policy</u>	<i>Is the proposal Consistent or Inconsistent with the Objectives and Policies?</i>
Objective 17.2.1	Ensure the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	The safety of people and property will require careful engineering design and management of the earthworks, particularly close to the property boundaries. The application states that the volume of earthworks will involve a total of 14 weeks of earthworks in three stages. The explanation to Objective 17.2.3 refers to earthworks being an essential part of development, but that a balance must be struck, including avoiding significant works in sensitive locations. The earthworks can be managed and the adverse effects are ultimately temporary. I consider the proposal is consistent with these objectives and policies.
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	
Policy 17.3.9	Control earthworks in Dunedin according to their location and scale.	

Transportation

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
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 proposed activity can be accommodated within the transportation network. I consider the proposal is 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.	

Environmental Issues

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
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.	Provided the maximum noise levels are not exceeded for both the construction and then use of the multi-unit development, the public health of neighbours will not be affected over the long term. I consider the proposal is consistent with this objective and policy.
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and amenity.	
Objective 21.2.4	Ensure the disposal of wastes is undertaken in a manner that avoids, remedies or mitigates adverse effects on the health and amenity of people and communities within the City, and on their environment.	Although this policy is focussed on waste disposal facilities, the collection of waste is part of the waste disposal service and will need to be suitably managed. I consider the proposal is consistent with this objective.

Proposed 2GP

The following Proposed Plan objectives and policies are considered relevant to the proposal (noting that the shaded objective or policy indicates that it is subject to appeal):

Strategic Directions

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
<u>Objective 2.2.2</u>	Dunedin reduces its reliance on non-renewable energy sources and is well equipped to manage and adapt to changing or disrupted energy supply by having: a. ... b. reduced reliance on private motor cars for transportation; ...	The proposal will create multi-unit development close to the central city. I consider the proposal is consistent with these objectives and policies.
<u>Policy 2.2.2.4</u>	Support transport mode choices and reduced car dependency through policies and rules that: a. restrict the location of activities that attract high numbers of users, and to which access by a range of travel modes is practicable, to where there are several convenient travel mode options, including private vehicles, public transport, cycling and walking; b. ... c. allow the highest development densities in the most accessible	

	locations, being in the central city and suburban centre zones; ...	
<u>Objective 2.2.4</u>	Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.	
<u>Policy 2.2.4.2</u>	Encourage new residential housing development in the central city and larger centres, through rules that: a. provide for residential development in the central city and centres; and ...	
<u>Objective 2.2.5</u>	Development in the city is designed to reduce environmental costs and adverse effects on the environment as much as practicable, including energy consumption, water use, and the quality and quantity of stormwater discharge.	As noted by the Council's 3-Waters department, the wastewater and stormwater services downstream are experiencing surcharge and additional demand will contribute to cumulative adverse effects on those services.
<u>Policy 2.2.5.2</u>	Enable and encourage on-site stormwater and wastewater management, where this would not endanger groundwater and is not in conflict with the efficient use of existing public, wastewater and stormwater infrastructure, through rules that provide for an alternative to connecting to public water supply, wastewater and stormwater infrastructure.	The development has suitable layout for solar orientation, outdoor living space and will create medium density housing.
<u>Policy 2.2.5.3</u>	Encourage improvements to the environmental performance of new housing by: a. assessment rules that consider the layout of subdivision and development in terms of solar orientation; b. encouraging new medium density housing in parts of the city that have old housing stock that is not protected for its heritage values; c. 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; and d. rules that restrict height in relation to boundary to facilitate access to sunlight in outdoor areas	The proposal will infringe the HIRB rules and will adversely affect the sunlight for the outdoor living space of 45 Cargill Street as well as some windows. It is noted that the properties at 33 and 35 Cargill Street do not have obvious outdoor living space, but the western side yard entrance ways of 33 Cargill Street and the western side yard outdoor area of 35 Cargill Street would be affected by the infringements of the HIRB. I consider the proposal is consistent with the objective and Policy 2.2.5.3 in terms of solar orientation, outdoor living space and providing for medium density housing. I consider the proposal is inconsistent with the objective and Policy 2.2.5.2 and 2.2.5.3 in terms of stormwater, wastewater and HIRB.
<u>Objective 2.2.6</u>	The risk to people's health and safety from contaminated sites, hazardous substances, and high levels of noise or emissions is minimised	Provided the maximum noise levels are not exceeded for both the construction and then use of the multi-unit development, the public health of neighbours will not be affected over the long term.
<u>Policy 2.2.6.1</u>	Protect people from noise, light or offensive emissions that may create adverse effects on health or well-being through rules that: a. ... f. restrict activities that generate high levels of noise from locating in residential zones.	Also the site is not a HAIL site. I consider the proposal is consistent with this objective and policy
<u>Objective 2.4.1</u>	The elements of the environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: a. ...	The amenity values of the surrounding area are considered to not be maintained or enhanced due to the overall bulk of the building exceeding height standards, height plane, yard and site coverage standards.

	e. the amenity and aesthetic coherence of different environments; and f. ...	I consider the proposal is inconsistent with this objective and policy.
Policy 2.4.1.5	Maintain or enhance the attractiveness of streetscapes, public open spaces and residential amenity by using rules that manage building bulk and location, site development and overall development density.	
Objective 2.6.1	There is a range of housing choices in Dunedin that provides for the community's needs and supports social well-being.	The development does provide for a multi-unit development where individual bedrooms are large enough to provide for a level of independence within group living.
Policy 2.6.1.1	Provide for housing development necessary to meet the future housing needs of Dunedin, through zones and rules that provide for an appropriate mix of development opportunities, including: infill development, redevelopment, and greenfield development; and that support Objective 2.2.4. Identify housing needs based on population projections and analysis of housing types required.	I consider the proposal is consistent with this objective and policy.
Objective 2.7.1	Public infrastructure networks operate efficiently and effectively and have the least possible long term cost burden on the public.	As noted by the Council's 3-Waters department, the wastewater and stormwater services downstream are experiencing surcharge and additional demand will contribute to cumulative adverse effects on those services.
Policy 2.7.1.1	Manage the location of new housing to ensure efficient use and provision of public infrastructure through: a. rules that restrict development density in line with current or planned public infrastructure capacity; ... d. assessment rules that require consideration of whether any discretionary or non-complying activities would consume public infrastructure capacity provided for another activity intended in the zone and prevent it from occurring; and e. 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.	I consider the proposal is inconsistent with this objective and policy.

Temporary Activities

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
<u>Objective 4.2.1</u>	Temporary activities are enabled while: a. minimising, as far as practicable, any adverse effects on the amenity and character of the zone; and b. ensuring any adverse effects on people's health and safety are minimised as far as practicable..	The application states that the volume of earthworks will involve a total of 14 weeks of earthworks in three stages. Based on subdivision consent SUB-2014-107, it would be possible to develop the site for 4 residential units without the extent of earthworks to create basement car parking on the front portion of the site.
Policy 4.2.1.1	Require temporary activities to be designed and operated to minimise, as far as practicable, adverse effects on: a. the amenity of surrounding properties; and b. people's health and safety.	As the development is built to and in places exceeds the height standards the scaffolding for the development will infringe height standards for what may be a significant amount of time and needs to be managed. The adverse effects are ultimately temporary.

	I consider the proposal is consistent with this objective and policy.
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Transportation

	Objective / Policy	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
Objective 6.2.2	Land use activities are accessible by a range of travel modes.	The proposed activity will meet the minimum required car parks of both plans and there is sufficient manoeuvring space on site for vehicles not to reverse onto the street. I consider the proposal is consistent with these objectives and policies.
Policy 6.2.2.1	Require land use activities whose parking demand either cannot be met by the public parking supply, or would significantly affect the availability of that supply for surrounding activities, to provide parking either on or near the site at an amount that is adequate to: a. avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the availability of publicly available parking in the vicinity of the site (including on-street parking and off-street facilities); and b. ensure accessibility for residents, visitors, customers, staff and students (as relevant) who have limited mobility, including disabled people, the elderly and people travelling with young children.	
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the safety and efficiency of the transport network	
Policy 6.2.3.4	Require land use activities to provide the amount of parking necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not practicable, adequately mitigated	
Policy 6.2.3.9	Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where: a. adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated; and b. ...	
Policy 6.2.3.10	Require garages and carports to be set back an adequate distance from the road boundary to allow pedestrians and cyclists to see vehicles exiting before they cross the footpath, and to minimise, as far as practicable, the risk to pedestrians and cyclists from garage doors opening over the footpath	The proposal involves a garage on the front boundary, which will give little chance to see vehicles. However, the Planner – Transportation considers the proposal to be acceptable. I consider the proposal is consistent with this policy.
Objective 6.2.4	Parking areas, loading areas and vehicle accesses are designed and located to: a. provide for the safe and efficient operation of both the parking or	The proposed activity will meet the minimum required car parks of both plans and there is sufficient manoeuvring space on site for vehicles not to reverse onto the street.

	loading area and the transport network; and b. facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.	I consider the proposal is consistent with this objective and policies.
Policy 6.2.4.1	Require parking and loading areas, including associated manoeuvring and queuing areas, to be designed to ensure: a. the safety of pedestrians travelling on footpaths and travelling through parking areas; b. that vehicle parking and loading will be carried out safely and efficiently; c. that any adverse effects on the safe and efficient functioning of the transport network are avoided, or if avoidance is not practicable, will be no more than minor; d. the safe and convenient access to and from parking and loading areas for vehicles, emergency vehicles, pedestrians and cyclists; and e. that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths.	
Policy 6.2.4.2	Require driveways to be designed to ensure that: a. the surfacing and gradient of the driveway allows it to be used safely and efficiently; b. mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths; c. the width of the driveway is sufficient to allow the type and number of vehicles (including emergency vehicles), likely to be using it to do so safely and efficiently; and d.	

Earthworks

	<u>Objective/Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
Objective 8a.2.1	Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: a. visual amenity and character; b. the stability of land, buildings, and structures; and c. surrounding properties..	The earthworks can be managed regarding land stability, sedimentation, dust and drainage. Once the site is developed, most of the earthworks will not be particularly visible.
Policy 8A.2.1.1	Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, adverse effects on the stability of land, buildings, and structures by: a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b. ...	The application states that the volume of earthworks will involve a total of 14 weeks of earthworks in three stages. The earthworks can be managed and the adverse effects are ultimately temporary.
Policy 8A.2.1.2	Require earthworks and any associated retaining structures, to be designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area, including from: a. sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems; and;	I consider the proposal is consistent with this objective and policies.

	b. dust nuisance on the amenity of surrounding sites.	
Policy 8A.2.1.3	Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where the following effects will be avoided or, if avoidance is not practicable, adequately mitigated: a. adverse effects on visual amenity and character; b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and c. adverse effects on the stability of land, buildings, and structures.	

Public Health and Safety

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
Objective 9.2.1	Land use, development and subdivision activities maintain or enhance the efficiency and affordability of public water supply, wastewater and stormwater infrastructure.	As noted by the Council's 3-Waters department, the wastewater and stormwater services downstream are experiencing surcharge and additional demand will contribute to cumulative adverse effects on those services.
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities where: a. in an area with public water supply and/or wastewater infrastructure, it will not exceed the current or planned capacity of that infrastructure or compromise its ability to service any activities permitted within the zone; and b. in an area without public water supply and/or wastewater infrastructure, it will not lead to future pressure for unplanned expansion of that infrastructure.	I consider the proposal is inconsistent with this objective and policy.
Policy 9.2.1.2	Require development in the residential zones and the Mercy Hospital, Wakari Hospital, Moana Pool and Schools zones to provide adequate permeable areas to enable a reasonable level of rain water ground absorption.	The application states that the maximum impermeable area will not be exceeded. I consider the proposal is consistent with this objective and policy.
Policy 9.2.1.5	Require earthworks to be designed to ensure adverse effects from sediment run-off from the site on any drains, channels, soakage and treatment systems or stormwater reticulation will be avoided or minimised, as far as practicable.	The earthworks can be managed regarding land stability, sedimentation, dust and drainage. I consider the proposal is consistent with this policy.
Objective 9.2.2	Land use, development and subdivision activities maintain or enhance people's health and safety.	Provided the maximum noise levels are not exceeded for both the construction and then use of the multi-unit development, the public health of neighbours will not be affected over the long term.
Policy 9.2.2.1	Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not practicable, ensure any adverse effects would be insignificant.	I consider the proposal is consistent with this objective and policy.

Residential Zones

	<u>Objective / Policy</u>	<i>Is the proposal Consistent with or Inconsistent with the Objective?</i>
Objective 15.2.2	Residential activities, development, and subdivision activities provide high quality on-site amenity for residents.	The proposed development of the site provides suitable on-site amenity for residents. Although the outdoor living space at the ground floor does not meet the minimum area or dimension for Units 2, 3 and 4, this is compensated for by
Policy 15.2.2.1	Require residential development to achieve a high quality of on-site amenity by:	

	a. providing functional, sunny, and accessible outdoor living spaces that allow enough space for on-site food production, leisure, green space or recreation; b. having adequate separation distances between residential buildings; c. retaining adequate open space uncluttered by buildings; and d. having adequate space available for service areas.	the provision of balconies for the bedrooms and a roof top garden for each unit. I consider the proposal is consistent with this objective and policy.
Objective 15.2.3	Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	The proposed development exceeds height, height in relation to boundary and site coverage, resulting in adverse effects on neighbouring properties that will not maintain a good level of amenity on surrounding residential properties.
Policy 15.2.3.1	Require buildings and structures to be of a height and setback from boundaries that ensures there are no more than minor effects on the sunlight access of current and future residential buildings and their outdoor living spaces.	The proposal will not be consistent with the existing streetscape character.
Policy 15.2.3.3	Require buildings and structures in the Inner City Residential Zone to be of a height and setback from boundaries that: a. enables a high quality, medium density form of development; b. is consistent with the existing streetscape character of the zone; and c. avoids or, if avoidance is not practicable, adequately mitigates, adverse effects on sunlight access on outdoor spaces at the rear of adjacent sites.	I consider the proposal is inconsistent with this objective and policies.
Objective 15.2.4	Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	The amenity values of the residential area will not be maintained. Outdoor storage and service areas would not be visible. However, the basement garage would dominate the street, with no green space and the density would not reflect the existing residential character.
Policy 15.2.4.1	Require development to maintain or enhance streetscape amenity by ensuring: a. garages, carports and car parking do not dominate the street; b. there are adequate green space areas free from buildings or hard surfacing; c. buildings' height and boundary setbacks, and scale reflect the existing or intended future residential character; d. shared service areas are not visible from ground level from outside the site; and e. outdoor storage is managed in a way that does not result in unreasonable visual amenity effects or create nuisance effects.	I consider the proposal is consistent with the objective and Policy 15.2.4.1 in terms of outdoor storage and service areas. I consider the proposal is inconsistent with the objective and Policy 15.2.4.1 and 15.2.4.2 in terms of amenity and character.
Policy 15.2.4.2	Require residential activity to be at a density that reflects the existing residential character or intended future character of the zone.	
Policy 15.2.4.4	Require fences to be of a height and design that contributes positively to the streetscape amenity and character of the neighbourhood.	If the frontage of the development were a fence, it still would not contribute positively to the amenity and character as it has the appearance of a garage along most of the street frontage. I consider the proposal is inconsistent with this policy.
Policy 15.2.4.8	Only allow buildings over 300m ² footprint or multi-unit developments where they	The basement garage would dominate the street, with no green space and the density

	are designed to ensure that streetscape and neighbourhood amenity and character is maintained or enhanced.	would not reflect the existing neighbourhood amenity and character, and streetscape and neighbourhood amenity and character will not be maintained or enhanced. I consider the proposal is inconsistent with this policy.
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Overall Objectives and Policies Assessment

- [116] Although consideration should be given to the weight each Plan has, it is considered that the proposed activity is inconsistent with some key objectives and policies of both Plans regarding streetscape and neighbourhood amenity, and therefore these objectives and policies are considered to not support the granting of consent

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

- [117] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. Given the localised nature of the activity, the Regional Policy Statement for Otago is not considered to provide any specifically relevant provisions.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [118] Based on the findings above, it is evident that the proposal would not satisfy Part 2 of the Resource Management Act 1991. Granting of consent would not promote the sustainable management of Dunedin's natural and physical resources

Section 104

- [119] 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 proposed development overall will be more than minor.
- [120] 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. None have been provided to date.
- [121] 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 is inconsistent with some key objectives and policies relating to both the Dunedin City District Plan and the Proposed 2GP.
- [122] 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 Regional Policy Statement for Otago is not particularly relevant to this localised application within the residential area.

Other Matters

- [123] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The applicant has

requested that the lapse date for the consent be 10 years. I consider that the development is not of sufficient scale or complexity as to require extending the lapse date beyond 5 years, should the Hearing Committee decide to grant the application.

CONCLUSION

- [124] Having regard to the above assessment, I recommend that the application be declined. Should the Hearings Committee decide to grant the application, draft conditions are provided below

DRAFT DECISION IF THE COMMITTEE DECIDES TO GRANT THE APPLICATION

Land Use LUC-2018-679

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, and the Operative Dunedin City District Plan 2006 and the Proposed Second Generation Dunedin City District Plan (Proposed 2GP), the Dunedin City Council **grants** consent to a **restricted discretionary** activity being the demolition of the existing buildings on site and the establishment of four 8-bedroom residential units and associated earthworks at 43 Cargill Street, Dunedin, legally described as Part Section 17 Block XX Town of Dunedin (held in Computer Freehold Register OT282/59), subject to conditions imposed under section 108 of the Act.*

Conditions

LUC-2018-679

1. *The proposed activity must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, and the information provided with the resource consent application received by the Council on 6 November 2018 and a range of further information which was collated, finalised and received on 4 June 2020, except where modified by the following conditions:*
2. *Prior to the commencement of any earthworks or construction, a registered surveyor or licensed cadastral surveyor must determine the existing ground levels on the site in order to be meet conditions 35 and 36 below.*
3. *The consent holder must provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.*
4. *No earthworks shall be undertaken until building consent has been granted.*
5. *The consent holder must establish a construction phase vehicle access point to the site and ensure it is used by construction vehicles. The access is to be stabilised by using a geotextile fabric and either topped with crushed rock or aggregate. The access is to be designed to prevent runoff*
6. *Monitoring of nearby structures and property for movement using survey targets or other methods (such as a photographic condition survey) during the construction process is required. This monitoring system must be recommended and designed by a suitably qualified geotechnical engineer. Any record of movement must be notified to the Resource Consents Manager.*
7. *Prior to undertaking the work, a suitably qualified geotechnical engineer must assess the potential for instability on adjacent properties, included future potential surcharge, as a result of the works.*

8. *Confirmation must be made of foundation depths for existing structures in relation to the proposed earthworks.*
9. *A suitably qualified geotechnical engineer must be engaged to provide earthworks advice and earthworks supervision to ensure no temporary instabilities are created which may affect neighbouring properties.*
10. *All temporary slopes must be inspected and signed off by a suitably qualified geotechnical engineer.*
11. *Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the suitably qualified geotechnical engineer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring property or structures.*
12. *Scaffolding above the first floor level must not be in place for longer than 9 months.*
13. *Construction must not occur over weekend days and public holidays and work commence must not occur before 7.30am or after 6.0pm.*
14. *Construction noise must meet the following maximum levels:*

0730-1800 70dBA Leq and 85dBA Lmax.

All other aspects of construction noise must comply with NZS 6803:1999.

15. *The consent holder shall adopt all practicable measures to mitigate erosion and to control and contain sediment-laden stormwater run-off to prevent it entering the Council stormwater network, neighbouring properties during any stages of site disturbance associated with this development.*
16. *Any change in ground levels is not to cause a ponding or drainage nuisance to neighbouring properties.*
17. *Any soils from that area which require disposal off-site must go to a facility authorised to accept material of this kind.*
18. *Any fill material to be introduced to the site shall comprise clean fill only.*
19. *The earthworks must be undertaken with the principles of industry best practice applied at all stages of site development including site stability, stormwater management, traffic management, along with dust and noise controls at the site.*
20. *To ensure effective management of erosion and sedimentation on the site during earthworks and as the site is developed, measures are to be taken and devices are to be installed, where necessary, to:*
 - a. *divert clean runoff away from disturbed ground;*
 - b. *control and contain stormwater run-off;*
 - c. *avoid sediment laden run-off from the site'; and*
 - d. *protect existing drainage infrastructure sumps and drains from sediment run-off.*

21. *No soil disturbance or soil shifting, unloading, loading will take place if wind speed is higher than 14 metres per second if the soil is dry and prone to becoming airborne, unless a dust suppressant is applied.*
22. *All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site.*
23. *The consent holder must:*
 - a. *be responsible for all contracted operations relating to the exercise of this consent; and*
 - b. *ensure that all personnel (contractors) working on the site are made aware of the conditions of this consent, have access to the contents of consent documents and to all associated erosion and sediment control plans and methodology; and*
 - c. *ensure compliance with land use consent conditions.*
24. *Should the consent holder cease, abandon, or stop work on site for a period longer than 6 weeks, the consent holder must first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions, and must thereafter maintain these measures for so long as necessary to prevent sediment discharge or dust emission from the site. All such measures must be of a type and to a standard which are to the satisfaction of the Resource Consent Manager.*
25. *If at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures that have been affected/damaged by contractor(s), consent holder, developer, person involved with earthworks or building works, and/or vehicles and machineries used in relation to earthworks and construction works, must be reinstated to the satisfaction of Council at the expense of the consent holder.*
26. *The vehicle access must be formed to a maximum width of 6.0, minimum 3.0m, be hard surfaced from the edge of the Cargill Street road carriageway, to the property boundary, and be adequately drained for its duration.*
27. *The vehicle access must comply with the maximum gradient requirements contained within Rule 6.6.3.7 of the Proposed 2GP.*
28. *The surface of all parking, associated access and manoeuvring areas shall be formed, hard surfaced and adequately drained for their entirety, and parking spaces permanently marked.*
29. *If Car Park 5 is provided, the car parking aisle must be extended by at least 1.0m beyond Car Park 5. If Car Park 5 is not provided the space must be made available for cycle parking and/or solid waste management.*
30. *One of the car parks must be made available to meet the mobility parking width requirement of 3.6m.*
31. *Sufficient manoeuvring space shall be provided on the site to prevent vehicles reversing directly onto or off Cargill Street. The area shall be large enough so that an 85th percentile design motor car is only required to make two reversing movements when manoeuvring.*
32. *Any damage to any part of the footpath or road formation as a result of the demolition or construction works must be reinstated at the applicant's cost.*

33. *All parking spaces must be solely for the use of those residing on the site.*
34. *The consent holder must implement water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers and there must not be any kitchen facilities such as dishwashers or sinks within the bedrooms.*
35. *No building works shall proceed beyond the foundation stage until a registered surveyor or licensed cadastral surveyor, engaged by the consent holder, has provided written certification to the manager Resource Consents that the works completed will not result in any exceedance of any breach, infringement, or non-compliance shown in the approved plans.*
36. *No building works shall proceed beyond the framing stage until a registered surveyor or licensed cadastral surveyor, engaged by the consent holder, has provided written certification to the manager Resource Consents that the works completed will not result in any exceedance of any breach, infringement, or non-compliance shown in the approved plans.*
37. *If the consent holder:*
- a) *discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:*
 - i) *notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.*
 - ii) *stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.*

Any koiwi tangata discovered must be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

Site work may recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

- b) *discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:*
 - i) *stop work within the immediate vicinity of the discovery or disturbance; and*
 - ii) *advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and*
 - iii) *arrange for a suitably qualified archaeologist to undertake a survey of the site.*

Site work must recommence following consultation with the Consent Authority.

Advice Notes

Transportation

1. The vehicle crossing, between the road carriageway and the property boundary, is within legal road and will therefore require a separate Vehicle Entrance Approval from DCC Transport to ensure that the vehicle crossing is constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this approval is not included as part of the resource consent process).
2. It is advised that, if practicable, the basement car park be widened to enable the minimum parking requirements contained within Proposed 2GP Rule 6.6.1.1.c.ii.2 to be met.
3. All structures/buildings associated with this development must be contained within the site boundaries. DCC Transportation does not authorise any legal road encroachments in this instance.

Noise and Light Spill

4. The activity will need to meet the noise and light spill standards of the Proposed Second Generation Dunedin City District Plan.
5. Insulation should be sufficient to meet WHO guidelines for indoor noise levels. To avoid potential reverse sensitivity issues relating to traffic noise, as well as double-glazing, ventilation be installed in affected rooms.
6. Insulation between units will need to be adequate to protect tenants from noise within the building. The Applicant is advised that such noise will be considered to be 'inter-tenancy'.
7. Adequate refuse storage areas should be provided and managed so as not to cause a nuisance to any person.
8. The applicant is advised that the owner of the building can legally be held responsible for managing noise nuisance from the proposed development as well as other nuisances, e.g. accumulations of refuse.
9. The applicant is advised that heat pumps must be installed in such a way as to not cause noise nuisance issues.
10. In addition to the conditions of a resource consent and the noise standards of the Proposed Second Generation Dunedin City District Plan, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.

Earthworks

11. Temporary stability may be a concern on this project, and remains the responsibility of the developer. It is recommended that appropriate third party liability insurances are in place which identify nearby structures prior to undertaking any excavation that might affect others' land.

Infrastructure

12. The maximum impermeable area of the site must not exceed 80%. A Stormwater management Plan may be required as part of the building consent process due to the existing downstream stormwater system being under capacity for a 10yr event.
13. Detail of the water supply application process can be found at <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
14. All aspects relating to the availability of water for fire-fighting 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 the New Zealand Fire Service.

General

15. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
16. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
17. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
18. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

REASONS FOR RECOMMENDATION

[125] To be prepared if consent granted.

Report prepared by:



Robert Buxton
Consultant Planner

26 August 2020

Date

Report checked by:



Campbell Thomson
Senior Planner

26 August 2020

Date

APPENDIX 1:

THE APPLICATION

APPENDIX 2: SUBMISSIONS

APPENDIX 3:

COUNCIL OFFICER EVIDENCE