

9 April 2019

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C/O Southern Planning Solutions Ltd,
29 Roseberry Street, Belleknowes,
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By email to: kirstyn@planningsouth.nz

Dear Kirstyn

RESOURCE CONSENT APPLICATION: LUC-2018-738
69 ROYAL TERRACE
DUNEDIN

Your application for land use consent to redevelop an existing two-bedroom flat at 69 Royal Terrace by erecting two additional floors on an existing building with existing 100% site coverage, and no provision for on-site car parking and with resulting height, height plane breaches and boundary setback encroachments. This application was processed on a limited notified basis in accordance with 95A to 95G of the Resource Management Act 1991. The environmental effects were considered to be no more than minor, and no submission was received in respect of the application from the party considered to be affected. Pursuant to Section 100 of the Resource Management Act 1991, the application was considered by the Resource Consents Manager under delegated authority on 9 April 2019.

I advise that the Council has **granted** consent to the application. The decision is outlined below, and the consent certificate (including relevant conditions and advice notes) is attached to this letter.

BACKGROUND TO APPLICATION

The subject site is triangular in shape and is situated on a busy corner intersection of Arterial/District Roads in Royal Terrace and Pitt Street and Local Roads in Heriot Row. There is no vehicle access to the site as there are no existing on-site car parks. The site is gently sloping east to west and is immediately situated on road boundaries on the eastern, northern and western boundary.

An existing single story two bedroom flat occupies the entire 65m² site abutting the boundaries. The existing building was built as a shop in 1944, although the earliest records of former buildings on the site go back to 1910. The current use is rental accommodation. The south eastern boundary adjoins 54 Heriot Row which together with surrounding sites are generally medium density by nature.

There is no relevant consent history for this site.

DESCRIPTION OF ACTIVITY

Land use consent is sought to develop the existing two-bedroom flat into an apartment/permanent residence and home occupation at 69 Royal Terrace, Dunedin. The site is within the Residential 1 zone in the Operative District Plan and the Inner-City Residential zone in the Second Generation District Plan (2GP).

The proposal seeks to erect two additional floors above an existing dwelling which extends to the boundary at ground floor level. Additionally, the proposal seeks to extend to the boundary on the

proposed new floor levels across the 65m² site. Replicating the shape and form of the existing built form on the site.

The ground floor contains a bedroom/ensuite for friends and family guests visiting the owners and a separate bathroom and home office (architectural design). The first floor will contain the main bedroom, bathroom, a flexible break-out/sitting space which is also the landing space for the stairs. The third (top) floor will contain the main living room, kitchen/laundry, dining, and outdoor space/deck. The total floor area including the deck will be 195m².

There is no on-site car parking on the subject site and no car parking is proposed as a result of the proposal.

The subject site is legally described as LOT 1 DP 5817 (held in Computer Freehold Register CT-311/199). The site area is 65m².

ACTIVITY STATUS

Dunedin currently has two district plans: the operative Dunedin City 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.

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.

Dunedin City District Plan

The subject site is zoned **Residential 1** in the Operative District Plan and is located within **TH08 – Royal Terrace/Pitt Street/Heriot Row Heritage Precinct**. There are no designations registered against this site. Royal Terrace and Pitt Street are both classified as **District Roads** and Heriot Row is classified as a Local Road in the District Plan's Roading Hierarchy.

The proposed dwelling additions are defined as a Residential Activity:

Residential Activity is defined as;

"means the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papakaika housing if these are in the form of residential units."

Residential activity is permitted at a density of 500m² of site area per residential unit however an exemption is provided for any single residential unit on an existing site of any size under Rule 8.7.1(i). The proposed site area is 65m² in area, however, only one residential unit is proposed. One kitchen is proposed on the second floor.

Residential activity is permitted within the Residential 1 zone subject to compliance with the conditions attached to permitted activities. Resource consent is required as the proposal does not comply with the following conditions attached to permitted activities in the operative District Plan:

- Rule 8.7.2(i)(a) which requires Minimum Yard Setbacks to front and side/rear yards to be 4.5m and 2m respectively. The existing dwelling currently extends to the front and side yards of the site. The proposed dwelling will replicate the bulk of existing ground floor which extends to the boundaries.
- Rule 8.7.2(ii) which requires a height plane angle of 63°. The proposed height plane angle is 90°.
- Rule 8.7.2(iii) which limits a maximum height of 9m. A small portion of the roof will extend 0.5m above the maximum height limit to 9.5m.
- Rule 8.7.2(v) regarding minimum Amenity Open Space. Currently the site has 100% coverage. No changes to the footprint of the building are proposed, therefore, this is will not change as a part of the new dwelling.

- Rule 8.7.2(vii) requires a minimum of two car parking spaces for residential units exceeding 150m² GFA. The total floor area will increase from 65m² to 195m² resulting in an increase in shortfall from one car park to two car parks.
- Rule 13.7.3 (ii) requires resource consent for the addition, alteration, and painting to the exterior of buildings located within a heritage precinct. Council's discretion will be limited to the effect of the proposed works on the building's relationship with, and contribution to, the townscape and heritage values of the precinct.

Under Rule 8.7.4(i) failure to comply with the above provisions means the proposal is a **restricted discretionary** activity. The Council's discretion is restricted to the condition or conditions in which the activity fails to comply.

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

The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became deemed 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 are also deemed operative if no appeals are lodged or once any appeals have been resolved.

The subject site is zoned within the **Inner City Residential Zone** and is subject to a **Heritage Precinct Overlay Zone** being the **Royal Terrace – Pitt Street – Heriot Row Residential Heritage** Precinct. The Site also has an **Archaeological Alert Layer**. Royal Terrace and Pitt Street are both classified as **Arterial Roads** in the 2GP's Road Classification Hierarchy and Heriot Row is classified as a **Local Road** in the in the 2GP's Road Classification Hierarchy.

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 Activity

Standard residential activity is permitted within the General Residential 1 zone subject to compliance with the performance standards relating to; density, minimum car parking, outdoor living space, service areas and family flats. As the existing and proposed residential activity does not comply with the relevant density requirements outlined below, resource consent is required for the proposed land use.

Development Activity

New buildings, additions and alterations that result in a building that is less or equal to 300m² are permitted subject to compliance with the performance standards that apply to all development activities and building and structure activities. Resource consent is required as the proposal does not comply with the relevant development performance standards outlined below.

The proposed dwelling does not comply with the following rules in the 2GP:

- Rule 15.5.2(1)(e) which provides for 1 habitable room per 45m² of site area. The site is currently occupied by a 2-bedroom flat. A total of four habitable rooms are proposed (excluding the one principal living area on the second floor) including two bedrooms (one ground, one second floor), one home office (first floor), and one sitting room (first floor) which is capable of being used as a bedroom.

Breaches of Rule 15.5.2(1)(e) are assessed as a **non-complying** activity.

- Rule 15.5.8(1) which requires one parking space per 1-5 habitable rooms. There is currently no car-parking on the site. Four habitable rooms are proposed resulting in a deficiency of one car park.
- Rule 15.5.11.1(1)(iii) requires 20m² outdoor living space at ground level. There is currently no outdoor living space on the site. A deck on the third level will provide outdoor living space but this will only be a total of 15m².

- Rule 15.6.10(1)(c)(ii) a maximum of 80% site coverage is provided for. In this instance, there is already 100% site coverage and the ground floor footprint is unchanged by the proposal.
- Rule 15.6.13.1(a)(iii) - Minimum setbacks of 3.0m from the road boundary and 1.0m from any side/rear boundary are required. The existing dwelling currently extends to the front and side yards of the site. The upper floors will follow the same building alignment as the ground floor resulting in a continuation of the existing setback breaches, albeit at a greater height
- Rule 15.6.6.1(a)(ii) – provides for a plane rising at an angle of 45° measured from a point 3m above ground level (note the exemption under Rule 15.6.6.1(a)(v)(i) does not apply because the 2.0m side yards are not achieved). The height plane angle is 90°.
- Rule 15.6.6.2(a)(iii) requires that all buildings and structures (excluding family flats, garages and carports) within setbacks from boundaries do not exceed 2.0m in height. The building will be 9m in height within the yard setbacks.

Breaches of the rules outlined above are assessed as **restricted-discretionary** activities. The Council's discretion is restricted to the condition or conditions in which the activity fails to comply.

- Rule 13.4.2.3 requires additions and alterations to a non-character contribution building that involves an increase in the height of the building by more than 2m. Activities that breach this rule are controlled activity with Council's matter of control reserved to effects on heritage values.

It is noted that all Rules outlined above except for Rule 15.5.8(1) in relation to required car parking spaces per habitable rooms and Rule 15.6.6.2(a)(iii) in relation to boundary setbacks are currently under appeal.

In accordance with Rules outlined above, the proposal is a **non-complying** activity under the 2GP.

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

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

A search of Council records on the property has been undertaken and it is considered, more likely than not, that no activities have been undertaken on the site that appears on the HAIL. The existing use of the building is residential and an earlier reference to a former use of the building as a shop (in the 1940s) raises no potential concerns for contaminated soils. As such, the National Environmental Standard is not applicable to the proposal.

Overall Status

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

In this case, the rules all have the same activity status. The proposal is therefore a **non-complying activity**.

NOTIFICATION AND SUBMISSIONS

In accordance with Section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person.

The following party was determined to be adversely affected by the proposed new height and height plane angle breaches:

- Graham John Gilkison & James Hogg Gilkison (Owners of 54 Heriot Row)

However, no written affected party approvals were received as part of this application.

It was therefore determined that the effects of the proposal would be restricted to a limited party being the owners of the property of the infringed boundary at 54 Heriot Row. The application was, therefore, notified on a limited basis on 15 February 2019 to the owners of 54 Heriot Row

Copies of the application were sent to the following party the Council considered could be directly affected by the proposal, with submissions closing on 30 November 2018:

- Graham John Gilkison & James Hogg Gilkison (Owner of 54 Heriot Row)

No submission was received following the notification of the application.

As the application was assessed as having less than minor effects on persons beyond the subject site and the site at 54 Heriot Row, it is considered there are no planning issues which warrant a hearing in the absence of a submission.

Given the unique characteristics of the site and the degree of existing site coverage/height plane angle breaches and car parking shortfall, the continuation of the breaches raised no adverse effects beyond the adjoining property owner as assessed below.

The Processing Planner spoke with the applicant following the closure of the submission period. The applicant confirmed that they did not wish a hearing to be held, unless required by Council. Accordingly, the Manager Resource Consents, in consultation with the Chairperson of the Consents Hearings Committee, determined that a hearing is not necessary, as is provided for by Section 100 of the Resource Management Act 1991.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

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-*
- e) regardless of the scale, intensity, duration or frequency of the effect, and also includes -*
- f) Any potential effect of high probability; and*
- g) Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

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.

In this situation, residential development can be undertaken in a residential zone as of right, subject to compliance with the performance standards and/or conditions attached to permitted activities. This is the permitted baseline. In this case, application of the permitted baseline is unhelpful since the shape of the site limits the area of the site which could be developed to a small area of the site not reflective of the existing established footprint. The proposal is unable to comply with the bulk and location requirements of the operative and proposed District Plans. Comparison against what exists in the receiving environment forms a more helpful tool for assessment of the application.

Receiving Environment

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.
- For the subject site and adjacent land, the existing and reasonably foreseeable receiving environment comprises medium density residential development within an established residential suburb.
- It is against these that the effects of the activity, beyond the permitted baseline, must be measured.

The existing building defines the Royal Terrace, Heriot Row corner well with an extension of the building to the site boundaries. The site coverage and the yard breaches at ground level form part of the existing environment. Development on the adjacent site adjoining the south western boundary is set back from the boundary and is at a higher elevation to the subject site.

For the subject site and adjacent land, the existing and reasonably foreseeable receiving environment comprises medium density inner city residential development within an established residential suburb and heritage precinct overlay zone. The subject site and surrounding properties slope downwards towards the south with many dwellings in the area orientated to benefit from the southern views over the Dunedin Central City.

Assessment of Effects

Consideration is required of the relevant assessment matters in the Operative District Plan and the relevant assessment rules in the Proposed 2GP, along with the matters in any relevant national environmental standard. A broad assessment of effects has been made as the activity has a non-complying activity status. No regard has been given to any trade competition or any effects of trade competition.

An Assessment of Effects has been provided in the applicant's AEE, it includes an assessment of the associated effects surrounding bulk and location, heritage values, streetscape values, and the positive effects of the proposal. It is considered to be generally comprehensive and generally accurate. It is therefore adopted for the purposes of this report with the following additional considerations.

Density (Assessment matters 15.10.3)

Due to the layout of the existing building, the proposed development results in a breach of Rule 15.5.2(e) as the proposed addition of two floors of living will add an additional two habitable rooms. Rule 15.5.2(e) provides for 1 habitable room per 45m² of site area. The site is currently occupied by a 2-bedroom flat, or one residential unit. Only one residential unit will remain on the site, however, four habitable rooms are now proposed, one of those being a sitting room capable of conversion to an additional bedroom and the other a home office. When assessing the effects of this breach there are a number of matters that need to be addressed:

- It is considered that while there are extra habitable rooms, the matter of their use as part of a family home and a home occupation will likely mean that demand on services will not significantly increase under the ownership of the applicant. Mitigation measures occur as a result of the home office and breakout sitting space on the first floor not being permanently designed as bedrooms. It is considered that the occupiers of the site will only be using 1 bedroom, while the additional bedroom on the first floor will be used for guests. The breakout sitting space will likely only be occasionally used

in scenarios where further addition guests are staying on 'family occasions. Ultimately, as only one of the bedrooms will be used permanently and the remaining bedroom and breakout space will only be used occasionally, it is likely that the demand on services will not significantly increase when the site is owned and occupied by the applicant. To ensure the effects additional demand on services remains minor, a condition of consent will ensure that the ground floor home office space will not be used as a bedroom limiting the dwelling to a maximum of three habitable bedrooms at one time.

- The unusual nature and history of the site (such as its existing use of a difficult small size, fully covered, and road boundary locked location) support that this proposal will be a "true exception" and is unlikely to set an undesirable precedent that leads to a plethora of like applications. While there are other corner sites such as this, generally they are supported by additional land area enabling development to be setback from the more difficult to develop triangular corners. This is outlined in further detail in the Decision Making Framework section below.
- Under the Operative District Plan the proposed density is permitted as there is no habitable room control, therefore, under this provision the proposed dwelling is compliant with density. Furthermore, the relevant density provisions in the Proposed District Plan are subject to appeal, therefore reasonable weight can be given to the Operative District Plan in this scenario.
- Council's 3-Waters report provided additional assessment regarding the effects of the density breach on the storm and waste water system. This assessment is outlined below under the wastewater disposal, water supply, and stormwater assessment.

Bulk and Location (Assessment Matter 8.13.3 and 15.10.4(2) & 15.10.4(7))

Setbacks and Site Coverage

Due to the nature of the site (triangular in shape, small and at the corner intersection of two roads), the proposed development breaches setback requirements and site coverage requirements under both District Plans. The existing dwelling currently extends to the front and side yards of the site and 100% site coverage already exists. As these breaches already exist, albeit at ground level only and due to the unusual nature and history of the site, no additional adverse effects would result as part of the proposed development. The utilisation of the building envelope above the existing ground floor footprint promotes an efficient use of land and the additional built form will offer positive effects on streetscape and heritage values, as recorded by heritage and urban design assessment (discussed further below).

While the proposed extensions will be situated immediately on the site boundary of 54 Heriot Row, adequate site distances and positioning of the main outdoor living space at the opposite, southern end at 54 Heriot Row will ensure there are no privacy or nuisance effects that are minor or more than minor on any persons residing at 54 Heriot Row. Further consideration for any potential adverse effects on the persons at 54 Heriot Row is outlined below.

Height and Height Planes

Under the Operative Plan, the proposed development breaches the maximum height standards of 9m by 0.5m. The breach is due to a small portion of the roof that extends to 9.5m. In this location, two roads including sidewalks separate the site from any properties to the north, north west, and north east, resulting in less than minor dominance effects and shading which might result from the additional height. At second floor level the covered deck area provides a break in the extension of built form to the street. While this does not provide relief from the effects of additional height on 54 Heriot Row, the level of separation from the residential dwelling on that property, combined with the elevated position of the dwelling at 54 Heriot Row over the subject site, results in less than minor effects on 54 Heriot Row. The existing building on the subject site already adjoins a ground level garage on 54 Heriot Row. The additional height will create less than minor amenity effects for the continued use of the garage (accessed at the street).

The Proposed 2GP anticipates additional height in this location of up to 12m, (albeit not combined with height plane angle and setback breaches). While subject to appeal, it is indicative of a building height on the subject site (if supported by resource consent) which could have a greater effect on the views and outlook of 54 Heriot Row than the subject proposal. Additionally, under the 2GP the

height within the yard setbacks is breaching the 2m maximum threshold as the building will be 9m across the majority of the site. However, those characteristics of the site referred to above, result in adverse effects which are minor on the only adjoining residential property. There are no adverse effects on any other property as a result of the height breaches and the setbacks.

In regard to the height plan breaches, the attached plans provided by the applicant show the extent of the breaches against the 45° height plane recession planes. The maximum degree of protrusion through the height plane varies from approximately 4.2m to 4.35m along the entire southwestern boundary. The building extends 10.5m along the entire southwest boundary. The height plane angle encroachment extends with the greatest breach occurring on the south western boundary against the 54 Heriot Row property. This property is considered to be the only property adversely affected by the height plane angle breach given the site is to the south of any other development and the separation afforded by the roads. However, there is a noticeable difference in ground elevation between the subject site and 54 Heriot Row which mitigates any adverse effects to minor. This is evident on the attached plans which show that the highest point of the existing dwelling at 69 Royal Terrace is below that of the lowest point of the dwelling at 54 Heriot Row. While the proposal will result in a three-storey dwelling the proposed extension will sit only 5m above the ground level of 54 Heriot Row, a height more reflective of a two-storey building for a length of 10m along the southwestern boundary.

Given the extent of protrusion and the site characteristics referred to above, there is no loss of sunlight/shading effects that are more than minor on the property of 54 Heriot Row and on the surrounding environment.

A further mitigating factor, although not able to be relied upon for continued mitigation of any effects of the proposal, is the existing mature tree situated on the site at 54 Heriot Row. Should the owners retain the tree, it will provide additional screening of the proposed development from the site. Putting the tree aside, the elevation of the site at 54 Heriot Row and the short length of the boundary will ensure that any adverse effects of the height and height plane angles breaches are minor. I also note that if the owners and occupiers of 54 Heriot Road had concerns in relation to amenity impacts they could have identified these through a submission and they chose not to submit on the proposal.

Heritage and Urban Design – Effects on Heritage Values and Streetscape Amenity

The site is located in the Royal Terrace/Pitt Street/Heriot Row Heritage Precinct under both the Operative and Proposed Plans therefore, the application was forwarded to the Council's Heritage Advisor for an assessment of the effect of a proposed taller building on this corner site on the values of this precinct. The Heritage Officer is satisfied that the new development meets identified heritage precinct values and development performance standards under both District Plans. The Officer is also satisfied that chosen colours are compatible with the colour palette recommendations stated in the 2GP and go on to record that the proposal will bring a new quality and sense of solidity to the prominent corner position that will enhance its value, significance and overall streetscape quality.

Similar comments were provided by Council's Urban Design department who recorded that the proposed redevelopment makes good use of the resource and will provide positive effects on streetscape values.

Overall, having considered the proposed design, the introduction of additional bulk and height at this corner site, is considered to have less than minor effects on the heritage values of the precinct.

The proposal is for a residential activity in a residential zone within a Heritage Precinct. Relying on the comments of the Heritage and Urban Design Officers, it is considered that the proposal will not detract from the amenity values of the zone, and will not affect the character of the area. Therefore, there will be no adverse effects that are more than minor on the heritage or wider amenity of the surrounding environment.

Effects on the Transportation Network (Operative Plan 8.13.7; Proposed Plan 6.13.1)

Given the existing shortfall of car parking space, the the additional floor area that the proposal introduces on the site, and the projection of the new built form, the application was forwarded to Council's Transport Department for comment. The Officer's comments are addressed under two separate headings below, Parking and Encroachment into the Legal Corridor.

Parking

The Transport planner determined that due to the nature of the sites location at a complex and busy intersection and adjacent to an arterial road, construction of an additional access to provide an onsite car park could potentially result in other adverse effects relating to road safety. Due to the individual characteristics of the site (i.e. shape, size, existing development footprint) and its location on the corner of a busy intersection the Officer that providing on-site car parking would be impractical and could possibly lead to further safety concerns. Furthermore, the applicant has explained that the owners of the site currently take advantage of the site's proximity to the centre city, allowing them to walk to work and thereby making on-site car parking requirements less essential. Given the proximity element, Transport planner determined that a continuation of the existing lack of on-site car parking is appropriate. At the recommendation of the Transport planner, a number of advice notes have been included in Appendix 1 elaborating on the Council's rights regarding kerbside parking restrictions in proximity to the site in the future.

Encroachment into the Legal Corridor

Shroud constructions are proposed around the perimeter of the upper level windows and awnings over both pedestrian accesses to the building. Council's Transport Planner identifies the necessity for the applicant to obtain a License to Occupy for any structures that encroach into the legal road corridor. Advice notes regarding this matter are provided in Appendix 1, as this matter can only be addressed outside of the resource consent process

Overall, the Transportation Planner is satisfied that the adverse effects of the shortfall in car parking on the transportation network will be no more than minor. The Officer provides a mechanism for the encroachment into the legal road to be addressed outside of this consent. Advice notes are included in this decision regarding on-street car parking and any encroachments into the legal road corridor.

Wastewater Disposal, Water Supply, and Stormwater

The application was forwarded to the Council's 3 Waters Unit. The 3 Waters Policy Analyst is satisfied that the proposal will have no more than minor effects on the City's reticulated services, subject to compliance with a condition recommended by the department. Advice notes are included regarding future requirement for the servicing of the site.

The assessment from 3 Waters determined that there are no issues for the continued supply of water to this development, however there are concerns with wastewater and stormwater. Regarding wastewater, it was determined that due to the additional two habitable rooms which could count as "1 person per room" additional wastewater will be discharged to the existing wastewater network to a level greater than what has been anticipated for this smaller site. Downstream network issues along the Frederick Street and Main Interceptor Sewer have been raised as they are fully surcharged, and two manholes are currently known to overflow during a 10% AEP rainfall event. The Officer identifies that the addition of over-dense developments upstream of those downstream pressures will aggravate the existing known wastewater network issues.

3 Waters consider that this will be contradictory to policy provisions contained in the 'Dunedin Towards 2050 – a Spatial Plan for Dunedin 2012' namely, Objective ESR 9. Policy (a). Allowing an over dense development in an area such as this would be contradictory to this policy. However, 3 Waters have identified a remedy to this inconsistency, in the form of a proposed recommended condition requiring the installation of water saving devices that aims to reduce water consumption and therefore the volume of wastewater. The condition is included in the decision certificate in Appendix 1.

Although an existing situation, the 3 Waters Unit also assessed the effects of a 100% impervious site on stormwater, which breaches the 60% maximum coverage for buildings and 80% for buildings and surfaces combined as outlined in Rule 15.6.10(1)(c)(ii). 3 Waters acknowledge that no earthworks are proposed, and therefore no Stormwater Management Plan is necessary, however, they recommend that the developer installs a retention tank to help reduce stormwater runoff.

In summary, there are no further issues regarding water supply or the disposal of stormwater and waste from the subject site and the overall effects on wastewater and stormwater will be less than minor subject to the implemented conditions recommended by 3 Waters

Hazards

Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance.

The assessment of the risk from natural hazards requires a combined assessment of:

- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
- (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
- (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

Having regards to this assessment and the review of the application by Geotech, it is considered that there are no significant risks from natural hazards that need addressing as part of this application. Geotech further noted that there are no general potential instabilities of concern with the proposal as it will not create or exacerbate instabilities on this or adjacent properties.

Cumulative Effects (Operative Plan 8.13.13)

The effects from this proposal are not considered to add to the existing effects on the subject site or on adjoining sites such that the cumulative effects are more than minor.

Both 3 Waters and Transport have assessed this application in terms of any cumulative adverse effect on the Council's infrastructure. Both Departments consider any potential adverse effect can be mitigated through conditions of consent and their recommended conditions have been adopted and are reflected in the decision certificate.

There are no adverse cumulative effects on the streetscape and/or heritage values of the precinct as a result of this proposed development. Relying on the advice of Council's Heritage and Urban Design Officer, there will likely be positive outcomes for this site on heritage and streetscape values as "it will enhance its value, significance and overall streetscape quality."

Effects Assessment Conclusion

After considering the likely effects of this proposal above, overall, I consider the effects of the proposal will be no more than minor with conditions in place and any adversely affected parties have either provided written approval or have been formally notified of the proposal and did not submit.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

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.

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))

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

Dunedin City District Plan

The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Sustainability Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 4.2.1 Enhance the amenity values of Dunedin.	The proposal involves the construction of two additional storeys onto an existing dwelling in a heritage overlay zone and involves several bulk and location and development breaches. It is has been determined that the effects of any of these breaches will not have any effects on the environment that are more than minor. Furthermore, the application has been reviewed in by urban design and heritage officers who have determined that the proposed development will have positive effects on character and amenity of the surrounding environment. The proposal is considered to be consistent with the objectives and policies of the Sustainability Section.
Policy 4.3.1 Maintain and enhance amenity values.	

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 8.2.1 Ensure that the adverse effects of activities on amenity values and the character of residential areas are avoided, remedied and mitigated.	The subject site is unusual by nature and involves a number of pre-existing breaches. The proposed colour scheme is accepted by the Council's Urban Design and Heritage Officers as mitigating effects on the Heritage Precinct and streetscape values. Their general support for the proposal as enhancing precinct and streetscape values is noted The proposal is considered to be consistent with the relevant objectives and policies of the Residential Section.
Policy 8.3.1 Maintain or enhance the amenity values and character of residential areas.	

Hazards Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?

Policy 17.3.2 Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	The subject site has not been identified within any known hazards in Council's Hazard Register and the proposal does not involve the removal of any vegetation, or earthworks which may result in land stability concerns. The proposal is considered to be consistent with the relevant objectives and policies of the Hazards Section.
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Townscape Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 13.2.1 Ensure that the important values and characteristics of the natural features and areas which provide the setting for the urban areas are protected	As assessed above review of the application by Heritage and Urban Design has outlined that the proposal will bring a new quality and sense of solidity to the prominent corner position that will enhance its value, significance and overall streetscape quality. Additionally, the proposed redevelopment makes good use of the resource and will provide positive effects on streetscape values. Therefore, the proposed additions to the existing building at 69 Royal Terrace will enhance the townscape, heritage character and values of that precinct.
Objective 13.2.5 Ensure that the character of significant townscape and heritage precincts is maintained or enhanced.	
Policy 13.3.4 Protect and enhance the heritage and townscape values of the Royal Terrace/Pitt Street/Heriot Row precinct.	
Policy 13.3.5 Require within identified precincts that any development, including alterations and additions to buildings and changes to the external appearance of buildings, maintain and enhance the townscape, heritage character and values of that precinct.	The proposal is considered to be consistent with the objectives and policies of the Transport Section.

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The relevant transportation policy framework outlines that importance of ensuring that the transportation network is safe, efficient, and effective, and that proposals avoid, remedy, and mitigate adverse effects on the network.
Objective 20.2.4 Maintain and enhance a safe, efficient	

and effective transportation network.	While there is a on-site car parking shortfall, this policy framework does not consider this, but rather only seeks that any existing or proposed changes to the transportation network are in line with the relevant Objectives and Policies. Overall, as no changes are proposed to the transportation network, it is determined that there will be no further adverse effects in this regard. The proposal is considered to be consistent with the objectives and policies of the Transport Section.
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.	

Proposed 2GP

The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies were considered to be relevant to this application:

Residential Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 15.2.3 Activities in residential zones maintain a good level of amenity on surrounding residential properties and public spaces.	Despite numerous breaches, the characteristics of the site and the proposed design ensure that residential amenity is maintained consistent with this objective.
Policy 15.2.3.2 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 owner of the most affected property did not submit on the application and the occupier provided written approval. Notwithstanding this, the effects on the infringed boundary will not result in material adverse effects on sunlight access of the current residential activity and associated outdoor living space of 54 Heriot Row.
Objective 15.2.4 Activities maintain or enhance the amenity of the streetscape, and reflect the current or intended future character of the neighbourhood.	In relation to Policy 15.2.4.2, there is a clear inconsistency as the level of density in this case clearly would not be appropriate for most other locations in the zone. Despite the unusual nature of the site and the true exemption argument that is outlined further below it is considered that proposal is still inconsistent with this relevant part of the 2GP policy framework.
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.	

	The proposal is considered to be consistent with the majority of these objectives and policies, however the proposal is inconsistent with Policy 15.2.4.2
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Townscape Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 13.2.3 The heritage streetscape character of heritage precincts is maintained or enhanced.	As previously discussed under the Operative Plan Townscape Section, the proposal will enhance and maintain the heritage streetscape character of the heritage precinct. The proposed alterations have been assessed by Council's Urban Design and Heritage units and have determined that they will be carried out in consistency with the heritage streetscape character and will further enhance the environment. The proposal is considered to be consistent with the objectives and policies of the Transport Section.
Policy 13.2.3.2 Require development within residential heritage precincts to maintain or enhance heritage streetscape character, including by ensuring: a) garages and carports do not dominate the street; b) garages and carports do not dominate the street; c) off-street car parking is appropriately located or screened from view; d) building heights, boundary setbacks and scale reflect heritage streetscape character; e) building utilities are appropriately located, taking into consideration operational and technical requirements; and f) fences do not screen buildings from view.	
Policy 13.2.3.5 Only allow additions and alterations to character-contributing buildings where visible from a public place, where their design, materials and location achieve the following: a) for all other additions and alterations, heritage streetscape character is maintained or enhanced.	

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 6.2.3 Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.	The existing site does not include any onsite car parking and no further car parking is proposed. As no on-site car parking is provided, the proposal is inconsistent with the policy framework
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.	The proposal is considered to be inconsistent with the objectives and policies of the Transport Section.
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.	
Objective 6.2.4 Parking areas, loading areas and vehicle accesses are designed and located to: g) provide for the safe and efficient operation of both the parking or loading area and the transport network; and h) facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.	

Overall Objectives and Policies Assessment

The proposal aligns with Objectives and Policies of both Plans in relation to streetscape, heritage, and impacts on amenity values. However, there is inconsistency with the relevant density and transport provisions in the Proposed 2GP as a result of the proposed amount of habitable rooms and car parking shortfall. In this case it is considered that the proposal is partly inconsistent with the policy framework of the Proposed 2GP. Even if the proposal was considered contrary to the relevant 2GP policies where there is an identified inconsistency I note that it would pass the effects limb of the 104D threshold test. Given the characteristics and unusual nature of the site, the proposal can also be considered as a "true exception" and would be unlikely to establish an undesirable precedent. This is discussed in further detail below. I also note that the relevant 2GP density rule is under appeal and therefore more weight could reasonably be given to the complying ODP density rule and supporting Policies and Objectives.

DECISION MAKING FRAMEWORK

Part 2 Matters

It is considered that the provisions of the Operative Dunedin City District Plan and the Proposed 2GP adequately address the relevant assessment criteria. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991. However, it is evident that the proposal would also satisfy Part 2 of the Resource Management Act 1991. Granting of consent would promote the sustainable management of Dunedin's natural and physical resources.

Section 104

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 not be more than minor and can be adequately avoided, remedied or mitigated provided recommended conditions of consent are adhered to.

Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.

Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to both the Dunedin City District Plan and inconsistent but not contrary to the Proposed 2GP.

Other Matters

Section 104(1)(c) of the Resource Management Act 1991 requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered relevant here. These issues have been addressed by the Environment Court (starting with *Russell v Dunedin City Council* C092/03) and case law now directs the Council to consider whether approval of a non-complying activity will create an undesirable precedent. Where a plan's integrity is at risk by virtue of such a precedent, the Council is required to apply the 'true exception test'. This is particularly relevant where the proposed activity is contrary to the objectives and policies of the proposed district plan.

The proposal is non-complying because the proposal breaches the density requirements of the 2GP as outlined above. In this case, I consider any precedent set would not lead to a plethora of like applications due to the exceptional nature of the site and the proposal. Approval of the application will therefore not undermine the integrity of either the Operative District Plan or the Proposed 2GP. Despite the inconsistencies with the 2GP policy framework assessed above, it is considered that the proposal is acceptable in this case as it's a "true exception" due to the previously described unusual nature of the site.

It is considered that approval of the proposal will not undermine the integrity of either the Operative District Plan or the Proposed 2GP as the activity will produce only localised and minor effects, if any, and will not set an undesirable precedent.

Section 104D

Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan. It is considered that the proposal at least meets the effects limb as while the proposed activity will be inconsistent with parts of the policy framework of the Proposed 2GP, any adverse effects arising from this proposed activity will be no more than minor. Therefore, the Council can exercise its discretion under section 104D to grant consent.

Conclusion

Having regard to the above assessment, I recommend that the application be granted subject to the conditions outlined in the decision certificate.

Consent Decision

*That, pursuant to Sections 34A(1), 104B and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity, being the development of the existing two-bedroom flat into an apartment/permanent residence and home occupation, at the site at 69 Royal Terrace, Dunedin, legally described as LOT 1 DP 5817 (Computer Freehold Register CT-311/199), subject to the condition imposed under Section 108 of the Act, as shown on the attached certificate.*

REASONS FOR RECOMMENDATION

Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity can be adequately mitigated and will not be significant.

The proposal is considered to be consistent with the key relevant objectives and policies of the operative Dunedin City District Plan and any inconsistency with the objectives and policies of the proposed 2GP is unlikely to result in an undesirable precedent.

Prepared by:



Chris Pearce-Smith
Consultant Planner

Approved by:



Alan Worthington
Resource Consents Manager

RIGHTS OF OBJECTION

In accordance with section 357 of the Resource Management Act 1991, the consent holder may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

The Chief Executive
Dunedin City Council
P O Box 5045
Dunedin 9058
Attn: Senior Planner- Enquiries Plaza, Ground Floor.

Yours faithfully



Alan Worthington

REPORT TO SENIOR PLANNER
09 April 2019



Resource Consents Manager

Consent Type: Land Use Consent

Consent Number: LUC-2018-546

Purpose: Redevelopment of a two-bedroom flat into an apartment with a home occupation activity

Location of Activity: 69 Royal Terrace, Dunedin.

Legal Description: Lot 1 Deposited Plan 5817 (CFR OT311/199).

Lapse Date: 9 April 2024

Conditions:

- 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 3 December 2018, except where modified by the following conditions.*
- Prior to occupation of the new upper floors, the consent holder must provide evidence (in the form of plumbing certificate/receipts/photographs) of the installation of water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers to the Resource Consents Manager via email (RCMonitoring@govt.nz) for Council's approval.*
- To ensure that demand on services is adequately controlled the proposed home office on the ground floor must not be used as a bedroom and the top floor of the building must continue to be used as a living area.*

Advice Notes:

General:

- In addition to the conditions of a resource consent, the Resource Management Act 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. A similar responsibility exists under the Health Act 1956.
- The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
- Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- It is the consent holder's responsibility to comply with any conditions imposed on their 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.

Transportation

- It is advised that the applicant has lodged the application fully aware that on-street parking will not be provided to service this activity. The applicant must accept that Council retains the right to review kerbside parking restrictions in proximity to the site in the future.

6. It is advised that the applicant will require an Encroachment License for any structures that encroach into the legal road corridor. The applicant should contact DCC Transport regarding this matter.
7. It is advised that DCC Transport does not accept liability for the maintenance of any structures located within the legal road corridor.
8. It is also advised that any structures located within the legal road corridor will remain at Council's pleasure.

Three Waters

9. *Code of Subdivision & Development*

- All aspects of this development shall be compliant with Parts 4, 5 and 6 of the Dunedin Code of Subdivision and Development 2010.

10. *Water services*

- 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.

11. *Stormwater services*

- Due to the 100% imperviousness of the site 3 Waters still that the developer installs a retention tank to help reduce the stormwater runoff. If the applicant decides to install a retention tank, the details of the tank can be assessed through the building consent.

12. *Erosion and sediment control*

- The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off:
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).

13. *Private drainage matters*

- Private drainage issues and requirements (including any necessary works) are to be addressed via the Building Consent process.
- Certain requirements for building on this site may be stipulated via the building consent process and are likely to include the following points:
 - Stormwater from driveways, sealed areas and drain coils is not to create a nuisance on any adjoining properties.
 - Surface water is not to create a nuisance on any adjoining properties.
 - For secondary flow paths, the finished floor level shall be set at the height of the secondary flow plus an allowance for free board.
 - As required by the New Zealand Building Code E1.3.2, surface water resulting from an event having a 2% probability of occurring annually, shall not enter dwellings. The finished floor level shall be set accordingly.

14. *Working from Home*

No more than 50m² of the gross floor area of the building is able to be utilised for the architectural design business under the Operative and Proposed 2GP performance standards. Any increase in the floor space of the business will necessitate a further resource consent to allow further assessment of the car parking shortfall and any effects on residential amenity.

15. Visitor Accommodation

No commercial visitor accommodation activity has been approved as part of this consent. Any commercial use of the building for visitor accommodation is a restricted discretionary activity requiring a new resource consent (see Rule 15.3.3.22 Proposed 2GP).

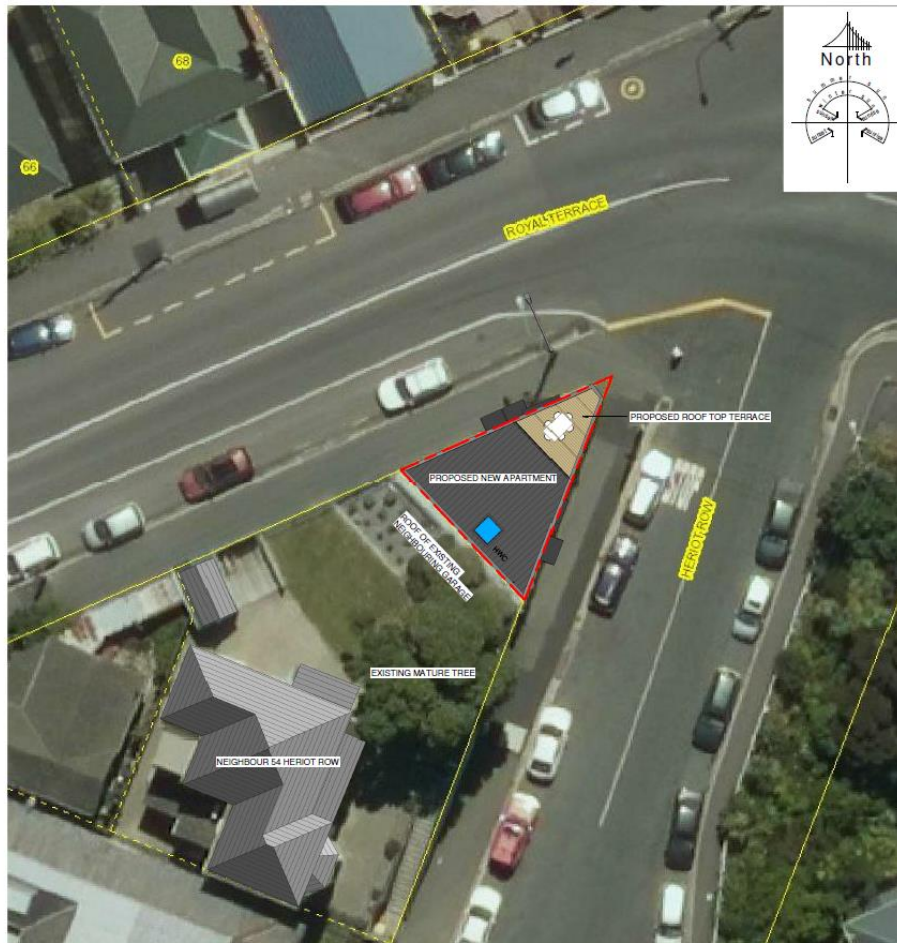
Issued at Dunedin on 9 April 2019.

A handwritten signature in black ink, appearing to read 'Alan Worthington', written in a cursive style.

Alan Worthington
Resource Consents Manager

Appendix 1 – Copy of plans for LUC-2018-728

[Scanned image –Not to Scale]



SITE PLAN
1:1000

Lowrise
DESIGN & CONSTRUCTION

NOTES:
1. Check to confirm all dimensions on site.
2. Do not scale off these drawings.
3. This plan is to be read in conjunction with the accompanying specification and conditions.
4. The site is to be read in conjunction with the accompanying specification and conditions.
5. The site is to be read in conjunction with the accompanying specification and conditions.

Revision Schedule

REV	DATE	SHEET	DESCRIPTION

PROPOSED ALTERATIONS FOR:
LOWRISE DESIGN CO LTD

Address:
69 ROYAL TERRACE, DUNEDIN

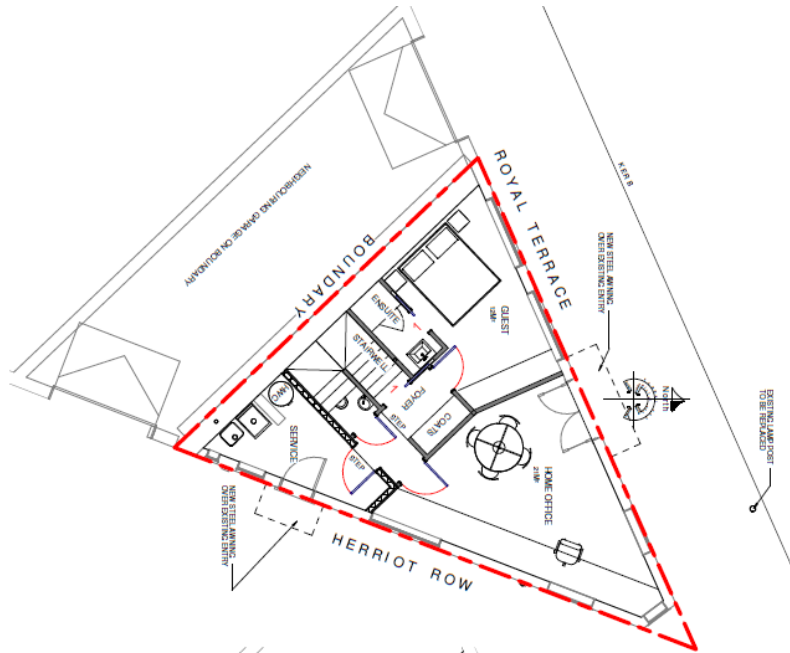
SITE PLAN

Job No: 2018/11/2018 10:30:30 p.m.
Drawn By: GPT **ISSUED:** 30/11/2018

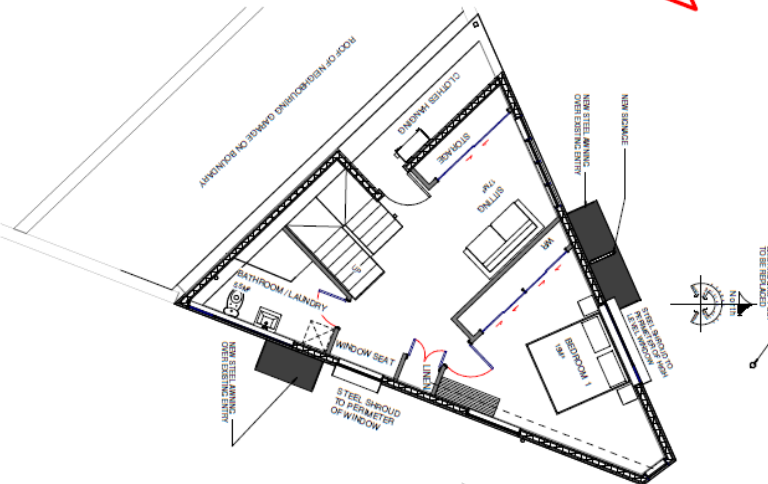
RESOURCE CONSENT ISSUE

Sheet: RC01 **of:** 4 **REV:**

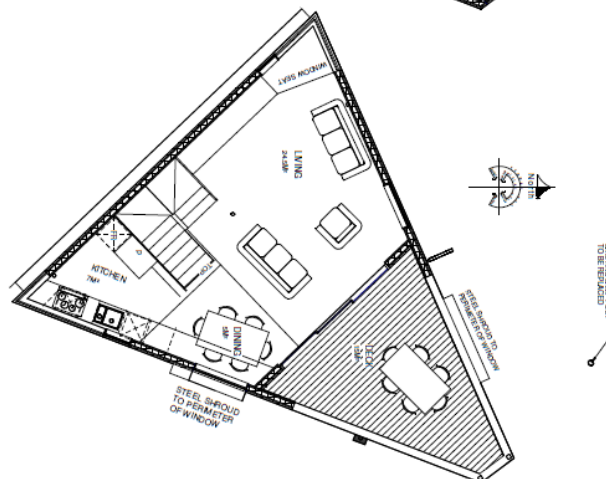
PROPOSED FLOOR PLAN - GRD FLOOR
1:1000 1:1000



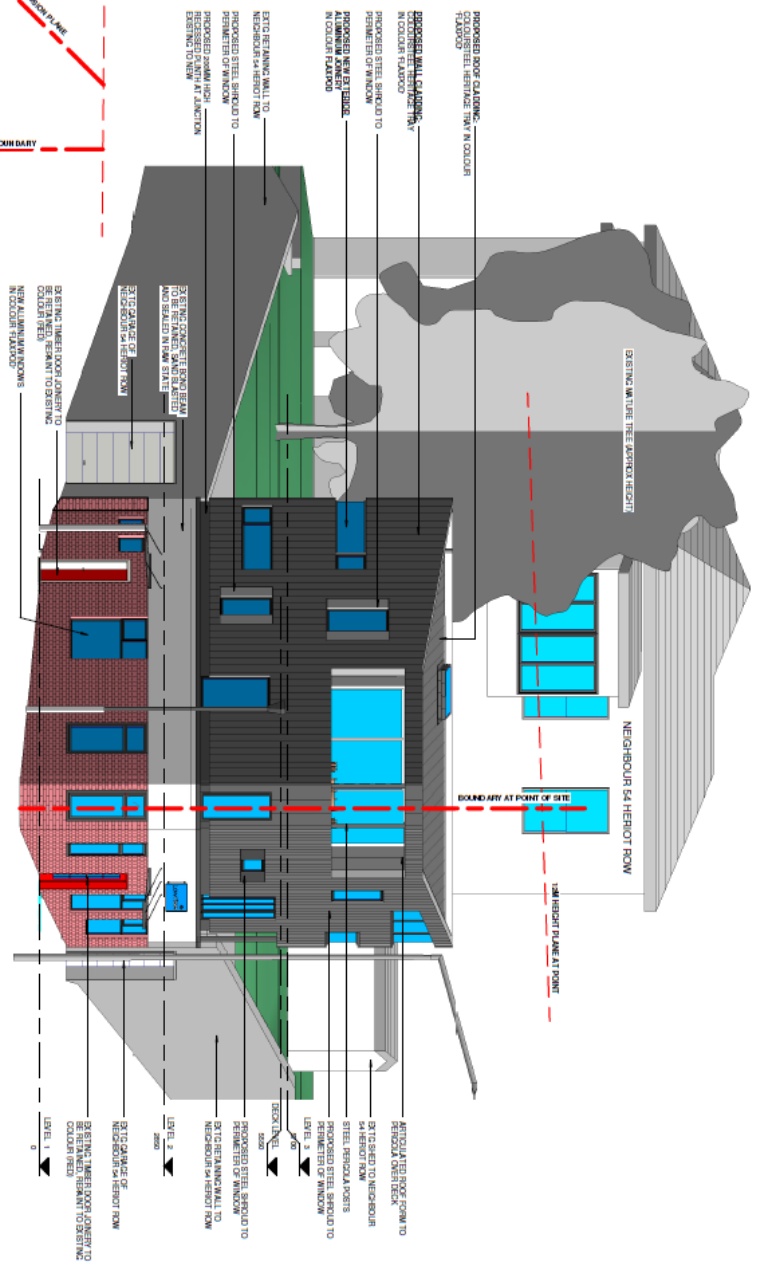
PROPOSED FLOOR PLAN - FIRST FLOOR
1:1000 1:1000



PROPOSED FLOOR PLAN - SECOND FLOOR
1:1000 1:1000







REAR (S.W.) ELEVATION

PITT ST (N.E.) ELEVATION
1:125[illegible]