

HEARINGS COMMITTEE AGENDA

FRIDAY, 5 MARCH 2021, 9.00 AM
Edinburgh Room, Municipal Chambers

MEMBERSHIP: Councillors David Benson-Pope (Chairperson), Jim O'Malley and Steve Walker

IN ATTENDANCE: Campbell Thomson (Senior Planner/Committee Advisor), Shane Roberts (Consultant Planner), Logan Copland (Planner, Transport) and Wendy Collard (Governance Support Officer)

PART A (Committee has the power to decide these matters):

1 RESOURCE CONSENT APPLICATION LUC-2020--601, 266 HANOVER STREET, DUNEDIN

Introduction

Applicant to introduce themselves and their team.

Procedural Issues

Any procedural matters to be raised.

Presentation of the Planner's Report

Report from Shane Roberts

Refer to pages 1 - 22

The Applicant's Presentation

Application

Refer to pages 23 – 82

Further Information Received

Refer to pages 83 - 92

Council Officer's Evidence

- Memorandum from Planner, Transport
Refer to pages 93 - 97

Environment Court Decision 2021 NZ EnvC 7

Refer to pages 98 – 129

Draft Conditions

Refer to pages 130 – 132

The Planner's Review of their Recommendation

The Planner reviews their recommendation with consideration to the evidence presented

The Applicant's Response

The Applicant to present their right of reply

PLEASE NOTE: The **only** section of the hearing which is not open to the public is the Committee's final consideration of its decision, which is undertaken in private. Following completion of submissions by the applicant, submitters and the applicant's right of reply, the Committee will make the following resolution to exclude the public. All those present at the hearing will be asked to leave the meeting at this point.

RESOLUTION TO EXCLUDE THE PUBLIC

To be moved:

“That the public be excluded from the following parts of the proceedings of this meeting, namely, Item 1.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48 (1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

	General subject of each matter to be considered.	Reason for passing this resolution in relation to each matter.	Ground(s) under section 48 for the passing of this resolution.
1	Resource Consent application – 266 Hanover Street, Dunedin	That a right of appeal lies to any Court or Tribunal against the Dunedin City Council in these proceedings.	Section 48(1)(d)

TO: Hearings Committee

FROM: Shane Roberts, Consultant Consultant Planner

DATE: 19 February 2021

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC -2020-601
266 HANOVER STREET
APPLICANT: KELSO TRUST COMPANY LIMITED

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 19 February 2021. 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.
- [2] My full name is Shane Leslie Roberts. I am employed by WSP in Dunedin as a Technical Principal - Planning. I hold the Degree of Bachelor of Resource Studies from Lincoln University and am a Full Member of the New Zealand Planning Institute. I am also a Certified Hearings Commissioner having completed the Making Good Decisions Training. I have over eighteen years of professional experience in the field of Resource Management Planning and am responsible for the provision of consulting services in resource management and planning to a range of public and private clients including government departments and regional and territorial authorities.
- [3] Of note, since 2010 I have provided consultant planning assistance to the Dunedin City Council processing resource consent applications of varying scale and complexity.
- [4] I visited the site on 13 January 2021.

SUMMARY OF RECOMMENDATION

- [5] For the reasons set out in paragraphs 91 - 105 below, I consider that the proposal is contrary to the key objectives and policies of the Proposed 2GP, in particular those of the Strategic Direction Section and those relating to the Princes, Parry, and Harrow Zone. As a result, I have concluded that the proposal should be refused.

DESCRIPTION OF PROPOSAL

- [6] Resource consent is sought to establish offices in an existing building at 266 Hanover Street. The various tenancies and configurations are set out below.
- [7] The proposed first floor tenant is Cloud Cannon, a tech business currently employing 23 staff in Dunedin. Cloud Cannon are currently located at 1 Bond Street (zoned

Warehouse Precinct). The adjacent area on the first floor will also be fitted out as office space for either a new tenant or expansion of an existing tenancy.

- [8] The proposed second floor tenant is Aukaha and an affiliated company Ahika Limited. Aukaha currently have 17 FTE plus 4 casual staff. Aukaha are currently located on two sites, 258 Stuart Street (CBD Zone), and 268 Stuart Street (Smith Street and York Place Zone). Ahika have 8 staff in Dunedin and are located at 2 Dowling Street which is zoned CBD.
- [9] The application also detailed (along with supporting documentation) the reasons the two prospective tenants are seeking to locate at the site. These reasons are summarised as:
- [10] Aukaha: (1) difficulty to find space in the city to meet the needs and aspirations of its organisation; (2) Growth in FTE's means Aukaha is currently located over two separate sites which makes service delivery challenging; (3) This site is located directly upon a waka landing site that is significant to Manawhenua; (4) The size and location of the building is close to developments Aukaha is involved with such as the Hospital build, University and Polytech development; (5) nearby parking and transportation options; (6) building features such as natural light, exposed brick and timber; (7) options such as charging stations for electric bikes and other technological innovations.
- [11] The space will allow Aukaha to hold hui and cultural and other workshops that are important to mana whenua and its partners. It also allows it to provide manaakitaka to its staff and manuhere in a manner where it is able to uphold its cultural values and practices.
- [12] Cloud Cannon: (1) being earthquake and fire code compliant; (2) wheelchair accessible, (3) large open plan floor space; (4) proximity to the University Campus with whom the company regularly interacts with; (5) the connectivity of the site in respect of public transport and cycle ways.
- [13] The application also states that Cloud Cannon are looking at a second site, outside of Dunedin¹.
- [14] A copy of the application, including plans of the proposed internal fitouts, is contained in Appendix 1 of this report.
- [15] The Committee should note that the design of the proposed fitouts is relatively well advanced and the need for consent was picked up by Council staff during a PIM check.

DESCRIPTION OF SITE AND LOCATION

- [16] The site is legally described as Lot 1 DP19139, held in Record of Title 41879. The site comprises on an area 0.1530ha.
- [17] The majority of the site is occupied by a three storey building, with frontages to Hanover Street, Harrow Street and Anzac Avenue. There is parking available on the north side of the building with access from Harrow Street.
- [18] The ground floor of the building is currently occupied by Anglican Family Care (611m²) and Sports Med (422m²). There is also a gymnasium on the site on the second floor.

¹ Application, Pg 2

- [19] The parking area contains 10 carparks (including a single mobility space). These parks are allocated by Condition 2 of resource consent LUC-2015-2 as follows:
- One space for all mobility users (including gym/clinic) users;
 - Two spaces for World Gym; and
 - Seven Spaces on the site shall be provided for Anglican Family Care.
- [20] In addition to its on-site car parking requirements, Anglican Family Care were required by way of condition 3 of the same consent to lease six off-site car parks from surrounding areas.
- [21] The applicant also clarified by way of a response to a further information request that there is a sheltered area for bike parking provided under the Lift building (subject of resource consent LUC-2020-499 and building consent ABA-2020-1969) at the end of the car park adjacent the lift tower. This space is approximately 6m² in area. The applicant has also negotiated with the tenants to install a battery charging station for E-Bikes within each tenancy.

HISTORY OF THE SITE/BACKGROUND TO THE APPLICATION

- [22] The three storey building was established in 1923 as a custom built factory and showroom for W Nees and Sons Limited. McKenzie and Willis Furniture occupied the ground floor of the building until 2013. The existing occupation of the building by Anglican Family Care, Sports Med Medical Centre and World Fitness Centre gym is authorised by resource consent LUC-2015-2 as amended by variation LUC-2015-2/A.
- [23] While resource consent LUC-2015-2 was principally for the proposed establishment of the Anglican Family Care tenancy as a community support activity, the consent also addressed the status of the existing medical centre and gym activities to resolve uncertainty over the lawful status of these activities. It was determined at that time the consent for the proposed activity could not be considered in isolation from the other existing activities. The gym was assessed as a non-complying activity and the other activities as discretionary activities. The gym on the site at that time occupied a portion of the first floor and part of the second floor. The variation LUC-2015-2/A authorised the relocation of the medical centre to the ground floor of the building and associated changes to the building. LUC-2020-499 approved a height breach associated with the redevelopment of the building to construct a lift tower (as identified on the submitted plans).

ACTIVITY STATUS

- [24] 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.
- [25] 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.

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

[26] The Proposed 2GP was notified on 26 September 2015. The 2GP zoning maps indicate that it is proposed that the subject site be zoned as **Princes, Parry and Harrow Street Zone**. The maps also indicate that the property is within the following overlays:

- **Hazard 3 – (Flood)** overlay zone
- **Hazard 3 – (Coastal)** overlay zone
- **Archaeological Alert Layer**

[27] The proposal falls under the definition of **Office Activity**. Under the Proposed 2GP, activities have both a land use activity and a development activity component.

Office Activity:

The use of land and buildings for any of the following:

- *administrative offices where the administration of any entity, whether trading or not, and whether incorporated or not, is conducted; or*
- *professional offices, such as offices of accountants, registered health practitioners, veterinary services, training and education, solicitors, architects, surveyors and engineers.*

The following activities are managed as sub-activities of office:

- *campus-affiliated office*
- *registered health practitioners*
- *training and education; and*
- *veterinary services.*

Office is an activity in the commercial activities' category.

[28] As identified by the applicant, this definition is under appeal. However, the scope of the appeal is narrow in that it seeks addition of "airport office" as a sub-activity. This appeal does not relate to this proposal.

Land Use Activity

[29] In accordance with Rule 18.3.4.14, offices not in a scheduled heritage building are a **non-complying activity** in the Princes, Parry and Harrow Street Zone.

Development Activity

[30] There are no development activities as part of the proposal.

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

[31] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) 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.

- [32] It has not been established whether any HAIL activities have been undertaken on this site. However, the National Environmental Standard only controls change in land use where the land use is reasonably likely to harm human health. Further, the NESCS is concerned specifically with risks associated with contaminants in soil. In this situation, the proposed use office activity in the first and second floor of an existing building. The proposed land use will not raise any implications for human health from soil contamination. As such, the National Environmental Standard is not deemed applicable to the proposal.

- [33] Overall the application is a considered to be a **non-complying activity**.

NOTIFICATION AND SUBMISSIONS

- [34] No affected persons forms were submitted with the application. No person or party is considered to be adversely affected by the activity. This is because the environmental effects of the proposal are internalised within the site boundaries, except for potential effects on the road network from parking demand, and are limited to effects on parties that are less than minor

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

- [35] 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

- [36] 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.

- [37] The application² has identified that a wide range of activities are permitted in the PPH Zone:

- Training and education;
- Trade related and yard based retail;

² Application, Page 12

- Visitor accommodation;
- Community and leisure activities;
- Residential activities;
- Industrial activities; and
- Emergency services.

- [38] These activities could all generate a degree of adverse effects that I consider form part of the permitted baseline. Whilst a number of these could be considered fanciful in the building its current form – such as Industrial Activity or Emergency Services, other activities, such as Training and Education could be undertaken in the existing building giving rise to similar effects to those potentially generated by the proposed activity.
- [39] Given the wide range of permitted activities in the PPH Zone, I consider it is appropriate to apply the permitted baseline in this instance.

Existing Environment

- [40] For the subject site, the existing environment comprises a large three-storied building which contains a mix of lawfully established office, gym and community support activities.
- [41] For adjacent land, the existing and reasonably foreseeable receiving environment comprises a wide range and mix of office, industrial, trade related retail, community support, residential and commercial activities. The site is bounded by State Highway 88 to the east. A green space is located to the south.
- [42] It is against this environment that the effects of the activity must be assessed.

Assessment of Effects

Proposed 2GP

Effects of the Office Activity (on the site and surrounds)

- [43] Given the office activities will be undertaken within an existing building, there are no effects of the activity in terms of a physical change to the neighbourhood to consider. The proposed activities will introduce extra movement of vehicles and people to and from the building, including associated delivery vehicles and visitors. Visitors are expected to be relatively common for Aukaha and the holding of small hui (~15 people) on the premises will be a part of their activity.
- [44] Given the activity will be undertaken within an existing building, there are no effects external to the site per se that are of note. The 'comings and goings' of people and vehicles associated with the activity will introduce a change to the local environment, in the form of intensification of activity in and around the building. Given the large number of permitted activities that could be undertaken on the site, applying a permitted baseline scenario of training and education activity (for example) the effects in terms of comings and goings from the building would be indiscernible between a permitted training and education activity (for example) and the proposed activity.
- [45] Office activity is also currently being undertaken on the site, though it should be noted that this was approved under the Operative Plan which has a less restrictive policy framework.

- [46] Any effects of the office activity on the site and surrounds are considered to be no more than minor.

Effects of the Office Activity (on Centres Vibrancy)

- [47] The 2GP has a clear policy direction regarding the consolidation of certain activities in the CBD (discussed below in the Objectives and Policies Assessment). In this instance, I consider a key effect for consideration is whether the relocation of the activities proposed from their current location will have an adverse effect on the zones they are currently located in or permitted. Adverse effects could arise, through the potential loss of vibrancy in these zones from the relocation of the activities elsewhere. In other words, keeping a critical mass of activity in certain parts of the City (such as the CBD) is important to maintain vibrancy.
- [48] In order to assess the significance of these potential effects, the applicant supplied further information in this respect in terms of the zoning of the current activities, and the numbers of staff located in the various current tenancies. The table below summarises this:

Tenant	Current Site	Current Zoning	Staff
Aukaha	258 Stuart Street	Central Business District (CBD)	5 + 1 casual
	268 Stuart Street	Stuart Street York Place (SSYP)	12 + 3 casual
Ahika	2 Dowling Street	Central Business District (CBD)	8
Cloud Cannon	1 Bond Street	Warehouse Precinct (WP)	23

- [49] In this instance, in terms of the CBD, there is a very small loss of critical mass resulting from the relocation of Aukaha and Ahika, as it equates to 13 full time staff being 'lost' from the CBD. Further to this, the applicant has indicated that replacement tenants have been secured for the space currently occupied by Aukaha in the CBD – though it is unclear if these tenants are new to the CBD or simply relocating from elsewhere in the CBD.
- [50] Furthermore, the Aukaha site in the SSYP Zone does not provide for office activity as a permitted activity (in fact the activity has a non-complying activity status), and similarly the activity status of Cloud Cannon's Office activity in the Warehouse Precinct is also non-complying (as it is in a non-scheduled heritage building).
- [51] Therefore in terms of effects on the vibrancy of centres, I consider the relocation of 13 staff from the CBD to be a less than minor effect, when you have regard to the number of people working in the CBD, and the fact that one of the sites being vacated in the CBD is already tenanted.

Transportation Effects

- [52] The site has relatively limited parking and loading facilities and all of the carparks on the site are currently tied to the activities authorised by resource Consent LUC-2015-2. In other words, reallocation of existing carparks to the proposed new tenants would be a breach of the conditions of LUC-2015-2, unless a change of conditions was applied for and granted.

- [53] Therefore, there are no on-site carparks currently available to provide for parking demand by the proposed activities, and the new tenants will need to make arrangements for any necessary carparking off site.
- [54] The applicant has indicated there is a sheltered area for bike parking at the site under the lift building and they will be installing a charging station for E Bikes within each tenancy.
- [55] The applicant also notes that as part of the lease agreement with Aukaha they will be provided with more off site carparks than they have at their current site. However, no further details regarding this parking have been provided.
- [56] The applicant has also indicated that a number of Cloud Cannon staff cycle (~20%) and bus (~40%) currently bus to work, with also 40% of staff working from home 2-3 days a week.
- [57] The applicant has also confirmed that the proposed activity is not a 'High Trip Generator' (more than 250 or more vehicle movements per day) in terms of the 2GP.
- [58] The application was also referred to Council's Planner – Transport, Mr Logan Copland for comment, a full copy of which is attached in **Appendix 3**. Mr Copland has identified that based on applying the industry standard trip generation/parking demand guidelines, the proposed tenancies would require 44 spaces. Mr Copland also notes, and as discussed in the application, a high percentage of Cloud Cannon Staff work from home, and also use alternative transport modes. Mr Copland also notes, despite this, the activity will generate a significant level of additional demand on kerbside parking.
- [59] The applicant has raised the direction given the National Policy Statement for Urban Development 2020 (NPS-UD) in Policy 11. This states:
- *Tier 1, 2 or 3 territorial authorities must remove district plan rules, assessment criteria, policies and objectives that have the effect of setting minimum car parking rates.*
 - *Territorial authorities must remove the provisions from their district plans without using a public plan change process (Schedule 1 of the Resource Management Act 1991 (RMA) per section 55 (2A) of the RMA.*
 - *Territorial authorities must amend their district plans to remove car parking minimums as soon as practicable, no more than 18 months from the date of commencement of the NPS-UD.*
- [60] Dunedin City Council is a tier 2 Territorial Authority, therefore the above applies.
- [61] As noted by Mr Copland, Council still has the ability to consider carparking through the current resource consent process, and in the future once the NPS-UD Policy 11 requirements are implemented. That said, the NPS-UD guides Council towards using travel demand management techniques and comprehensive parking management plans as mechanisms to manage potential car parking effects resulting from private development proposals. Regarding this Mr Copland states:
- Since there are alternative transport options available to occupants of this site and considering that a potential issue has been identified with respect to effects on kerbside parking occupancy the applicant must prepare and submit a*

comprehensive travel management plan to DCC Transport, prior to the commencement of the activity.

- [62] I agree with this conclusion. It is clear that national direction has changed with regards to the need to provide carparking, and relatively soon parking minimums in District Plans will be a thing of the past.
- [63] Finally, having regard to the permitted baseline, a number of activities could establish on the site potentially generating significantly more traffic / vehicle movements than the proposed activity – such as training and education - as of right.
- [64] For these reasons I consider any effects on the Transportation Network arising from the proposed activity to be less than minor.

Hazards Effects

- [65] 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.
- [66] 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).*
- [67] The site is subject to the following Hazard Overlays:
- Hazard 3 (flood)
 - Hazard 3 (coastal)
- [68] No development activity is proposed for the site and both proposed tenancies are not at ground level. Further to this the presence of the above overlays are not a trigger for consent. For these reasons any natural hazard effects are less than minor.

Cultural Effects

- [69] In response to a further information request, the applicant supplied further information regarding the significance of the site to manawhenua, as this was mentioned in the application as lodged. The applicant states³:

Ōtākou Harbour is mapped in the 2GP and is obviously highly significant. However, because of reclamation some of the former tauraka waka (landing sites) sit outside the current harbour extent and were not specifically mapped. The new location is at one such site – Mataukareao.

And

³ RFI response, Pg 6

In terms of the work that Aukaha do, much of this is around trying to recognise/restore the relationship between mana whenua and the environment. A lot of the work is around cultural narratives, putting names back in the landscape, helping to reconnect mana whenua to the whenua, trying to make others aware of these ancestral and ongoing connections to the Kāi Tahu takiwā. Aukaha have confirmed that having an office located on a named and known site from pre-European settlement time will help greatly with this kaupapa.

- [70] With respect to these statements I agree with the applicant, as I appreciate that locating their activity to a site that manawhenua have a historic connection to is part of manuwenua reconnecting to the whenua.
- [71] On this basis I consider there are some positive cultural effects associated with the proposed activity; whether these extend to the other tenants proposed as part of the application has not been traversed by the applicant and based on the application I consider this to be unlikely.

Positive Effects

- [72] The applicant has suggested that the building is one of significance for Dunedin⁴. I note the building is not listed in the 2GP as a heritage building. However, as the construction of the building dates back to shortly before the third New Zealand and South Seas International Exhibition held in Dunedin in 1925, it has some heritage value and contributes to the streetscape. Finding ongoing uses for this existing historic building ensures it can continue to contribute to Dunedin's streetscape into the future. I consider this to be a positive effect.

Cumulative Effects

- [73] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [74] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [75] In this instance, the issue of cumulative effects is one requiring some consideration and is closely related to the issue of precedent. The plan sets a clear direction regarding the need to maintain vibrancy in the CBD. Should this application, and others like it be approved, the vibrancy of the CBD could be slowly eroded – a cumulative adverse effect. Given the scale of the proposed 'loss' of office activity from the CBD, I am of the view this is not a significant environmental effect of this proposal. However, it is a matter the Committee need to be mindful of, as at some point the relocation of office activity out of the CBD may reach a tipping point where cumulative effects will be more than minor.

⁴ Application, Page 31.

Effects Assessment Conclusion

- [76] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [77] 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.
- [78] 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))

- [79] 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. Whilst the zoning of the site or activity status of the activity is not subject to appeal some of the key objectives and policies are.

Section 4 Sustainability

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	As identified above, the site has an extensive history (of ate) of non-industrial use. Council granted consent in 2015 for a non-industrial activity on the site – I would be very difficult to see an industrial activity now successfully establishing on the site and furthermore the site characteristics are such it would be difficult to undertake industrial activity without any major reconfiguration of the site. I consider the proposed activity to be consistent with these policies.
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	

Section 10 Industry

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 10.2.3 Ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.	There is no suggestion the proposed activity will limit the operation on non-industrial activities given the nature of surrounding activity. Further to this no reverse sensitivity effects are likely to accrue from the establishment of the activity on the site. I consider the proposed activity to be consistent with this objective and policy.
Policy 10.3.3 Avoid reverse sensitivity effects arising from the range of activities provided for in the Industrial 2 and Special Development zones.	

Proposed 2GP

- [80] The following objectives and policies of the Proposed 2GP were considered to be relevant to this application:
- [81] Note: those marked with an *asterisk are subject to appeal. In some instances not the entire objective or policy is subject to appeal, but a particular subsection is.

Strategic Directions Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 2.3.2* Dunedin has a hierarchy of vibrant centres anchored around one Central Business District Zone (CBD), which provides a focus for economic and employment growth, driven by: (a) attraction of businesses to these areas based on the high level of amenity and density of activity in the area; (b) opportunities for social interaction, exchange of ideas and business cooperation; (c) public investment in public amenities and other infrastructure in the CBD; and (d) opportunities for agglomeration benefits from the co-location of activities.	The proposed activity will result in the loss of a small number of staff from the CBD which I have concluded above to be a less than minor effect; therefore I do not consider the activity to detract from the vibrancy of the CBD. I consider the proposal to be consistent with this Objective.
Policy 2.3.2.1* Identify and protect the existing hierarchy of centres in Dunedin, which includes: (a) the CBD, which comprises the commercial core of the city centred around George Street, the Octagon, Princes Street to the Exchange and connecting down to the Railway Station; (b) principal centres, many of which were the former town centres of the various historic boroughs that make up Dunedin (South Dunedin, Mosgiel, Green Island, Port Chalmers). These centres provide a full range of commercial services to these communities and are important to their individual identity and for community-building; (c) suburban centres, which provide a full range of commercial services to suburban catchments; (d) rural centres, which like principal centres serve as community centres but generally provide for a smaller range of activities based on smaller population catchments; and (e) neighbourhood centres, which are generally small clusters of shops that provide for a range of day-to-day needs for local areas as well as, in neighbourhood destination centres, to visitors, and in neighbourhood convenience centres, to passing motorists.	The 2GP seeks to protect the existing hierarchy of centres in Dunedin, including the CBD. This protection is achieved, in part, through the rule framework of the plan that (in some instances) discourages the establishment of activities important to the CBD elsewhere in the city. In this instance this has triggered the consideration of a resource consent. With respect to this policy the key aspect for me is whether the effects of the proposed activity, coupled with the policy direction elsewhere in the plan is such that the protection of the CBD is warranted to the extent consent should be refused. I consider the proposed activity to be inconsistent with this policy as the activity is clearly removing some activity from the CBD to a zone where it is not provided for.
Policy 2.3.2.2 Maintain or enhance the density and productivity of economic activity in the CBD and centres through rules that restrict retail and office activities outside these areas unless: (a) they are unlikely to contribute to, or may detract from, the vibrancy of centres; or (b) as provided for under Policy 18.2.1.3 or 15.2.1.5.	The reason consent is required in this instance is the rules that implement this Policy. The policy provides two exemptions (a) and (b). With regards to (a) there are no aspects of this office activity that are incompatible with a CBD location, which would make this exception relevant. The activities of Aukaha, Ahika and Cloud Cannon are permitted in the CBD Zone and are likely to contribute to vibrancy of the CBD by being located in this zone. Given the existing location of both Aukaha and Ahika in the CBD Zone and Cloud Cannon nearby in an adjacent zone, there is an existing, albeit small, contribution to the vibrancy of the CBD that will be lost if these existing activities depart the CBD area. I note a single relocation / or several small relocations in and of itself may not result in any noticeable loss

	of vibrancy, but clearly the loss of office activity from the CBD, if enough businesses were to relocate, a cumulative adverse effect would eventuate. The activity is clearly not provided for under Policy 18.2.1.3 in relation to the PPH Zone. Policy 15.2.1.5 applies to Residential Zones and as such is not relevant. I consider the activity to be contrary to this policy.
Policy 2.3.2.3 Manage the mixed use areas around the edge of the CBD through zones and rules that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct Zone, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone), and that: (a) for the Warehouse Precinct Zone, support the retention of scheduled heritage buildings and heritage precinct values; and (b) for the Harbourside Edge Zone, allow for a transition toward a mixed use environment, with enhanced public connection to and along the coast, focused on residential, visitor accommodation, restaurant, and entertainment and exhibition and limited office activities alongside any existing port-related and industrial activities.	Policy 2.3.2.3 also provides some clear direction with respect to the vibrancy of the CBD. The rules that are a trigger for consent identify those activities that are appropriate for the PPH Zone (support rather than detract from the vibrancy of the CBD), and therefore those activities that require consent are those the 2GP views as potentially detracting from the vibrancy and vitality of the CBD, if they were to relocate. As noted above I have concluded effects on vibrancy to be a less than minor effect; therefore I do not consider the activity to detract from the vibrancy of the CBD. I consider the proposal to be consistent with this Objective.
Policy 2.3.2.4 Manage the other existing low-amenity mixed commercial/industrial areas around Andersons Bay Road, Hillside Road and the outer edges of the central city through zones that only provide for commercial activities that are likely to be incompatible with the amenity expectations of the CBD and centres, or require larger sites than are available in the CBD and centres, including: (a) for the Trade Related Zone providing for trade related retail mixed with yard-based retail and industrial activities, and large supermarkets; and (b) for the CBD Edge Commercial Zones, provide for large format and bulky goods retail along with yard-based retail and industrial activities.	Whilst in the assessment guidance in the plan refers to this policy as a 'priority consideration' the proposed activity is not located in either the Trade Related Zone or CBD Edge Commercial Zones. I consider the proposed activity to be consistent with this policy.
Objective 2.4.3 Dunedin's Central Business District is a strong, vibrant, attractive and enjoyable space that is renowned nationally and internationally for providing the highest level of pedestrian experience that attracts visitors, residents and businesses to Dunedin. It is supported by a hierarchy of attractive urban and rural centres.	This objective also refers to vibrancy. The proposed activity will result in the loss of a small number of staff from the CBD which I have concluded above to be a less than minor effect; therefore I do not consider the activity to detract from the vibrancy of the CBD. I consider the proposed activity to be consistent with this policy.
Policy 2.4.3.1 Identify key pedestrian routes and include these in a mapped primary pedestrian street frontage mapped area or secondary pedestrian street frontage mapped area. In these areas use rules to control development and land use at street level to ensure a public-private interface that supports a high level of pedestrian amenity and accessibility in centres.	The proposed activity is not located in mapped primary pedestrian street frontage mapped area or secondary pedestrian street frontage mapped area. The activity is therefore consistent with this Policy.
Policy 2.4.3.2 Protect the heritage streetscape character and high amenity of the CBD by identifying important heritage	The site is not located in the CBD. The activity is therefore consistent with this Policy.

precincts and zoning these as heritage precincts and using rules to:	
(a) manage the design and materials used in additions and alterations to character-contributing buildings and scheduled heritage buildings, and major additions and alterations to non character-contributing buildings within heritage precincts; and (b) manage the design of new buildings to ensure they are sympathetic to the heritage streetscape character and contribute to the amenity of the CBD.	
Policy 2.4.3.3 Manage the number and design of signs to avoid visual clutter, protect pedestrian safety, and maintain the attractiveness and architectural features of buildings.	No signage is proposed in the application. Any signage effects can be addressed at the time of any subsequent resource consent application. The proposed activity is consistent with this Policy.
Policy 2.4.3.4 Maintain or enhance the vibrancy and density of activity in the CBD and centres through rules that restrict the distribution of retail and office activity.	Again, this proposal is in a consent process as the plan rules restrict the distribution of office activity, with respect to the PPH Zone. The way the rules implement this policy, with respect to the current application, is through requiring resource consent for office activity in the PPH zone, and furthermore, making this a non-complying activity. The proposed activity will result in a small loss of office activity from the CBD, therefore not maintaining the vibrancy or density of activity in the CBD. Given the small loss of office activity from the CBD associated with the current application I consider the proposal to be inconsistent with this Policy.

Transportation Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 6.2.2 Land use activities are accessible by a range of travel modes.	As identified above, applying the industry standard trip generation / parking demand guidelines the site, having no available carparks, results in a significant parking shortfall.
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.	It is noted there are alternative transport options available to the site (as opposed to a private motor vehicle). Further to this, for private motor vehicle users, the site is 300 metres from the St Andrew Street carpark. Notwithstanding the above, In order to mitigate this effect, conditions regarding a travel management plan have been suggested, should consent be granted. In terms of Policy 6.2.3.4, no safety concerns have been raised.
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.	I consider the proposed activity to be consistent with this objective and policies.

Manawhenua

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 14.2.1 The relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with: (a) wāhi tūpuna; (b) mahika kai; and (c) occupation of original native reserve land through papakāika.	The applicant has identified that the location of Aukaha's Office in this location – a site that is named and known from pre-european times will enhance/restore the relationship between manawhenua and the environment. I consider the proposed activity to be consistent with this policy, noting the same

Commercial and Mixed Use Zones Section

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 18.2.1 Dunedin has a well-structured and economically and socially successful range of commercial and mixed use environments based on: (a) the CBD, which is the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities; (b) vibrant and viable principal centre, suburban and rural centre zones, which provide hubs for social and economic activity for rural, suburban and principal communities; (c) Neighbourhood Centre Zone, which provides for the day to day needs of local areas, with the Neighbourhood Destination Centre Zone also servicing visitor needs, and the Neighbourhood Convenience Centre Zone also servicing the needs of passing motorists; (d) a range of mixed use zones (WP, PPH, SSYP and HE zones) around the edge of the CBD, which provide for a compatible mix of inner-city living, commercial, and light industrial activities;* (e) an area south of the CBD (CEC – South Zone), which provides for high trip generators, large format general retail and bulky goods retail which are likely to be incompatible with the amenity expectations of the CBD and which may require larger sites than available in the CBD; (f) an area to the north-east of the CBD (CEC – North Zone), similar to the CEC - South but also containing a mix of activities which support the adjoining CBD and Hospital zones; (g) an area around Andersons Bay Road (TR Zone), which provides for trade related retail and specific categories of high trip generators, which are likely to be incompatible with the amenity expectations of the CBD; and* (h) an area around Birch and Kitchener Streets and the coast (HE Zone) which provides for the continuation of the existing environment characterised by industrial activity, while allowing for a transition toward a vibrant and attractive place to live, work and visit by also	With respect to the proposed activity the relevant subsections of this objective are (a) and (d). The proposed activity results in the loss of a small amount of office activity from the CBD, and I consider that given the minor effect associated with this loss as outlined above (Paragraph 51) it would be therefore unlikely that the granting of consent would mean that the CBD would lose its position as a focus for the activities outlined in 18.2.1.a. In terms of (d) there is nothing to suggest the proposed activity (as a commercial activity) is incompatible with surrounding activities, particularly when the permitted baseline is had regard to. Therefore I consider the proposed activity to be consistent with this objective.

providing for conference, meeting and function, entertainment and exhibition, restaurant, visitor accommodation, training and education and residential activities.*	
Policy 18.2.1.3 Avoid retail and office activities in areas where they are not provided for unless: (a) it is an ancillary and secondary component of a general retail - retail services or office activity that is undertaken in a scheduled heritage building as provided for by Policy 13.2.1.9 on the same or adjacent site; or (b) there is a significant and sustained increase in the amount of retail activity across the city and it has been demonstrated that as a result there is a medium to longer term under-supply of retail land across all the areas where general retail is provided for; or (c) in the HE Zone, it is associated with port, industrial or marine related activities operating in the area; or (d) in the PPH Zone it is associated with campus activity.	This Policy, with respect to the subject site is very strongly worded. In regard to the PPH Zone the 2GP has clearly stated that in unless office activities meet one of the circumstances set out in clauses (a) or (d), they are to be avoided (i.e. not allowed). The office activity will be the primary activity of the tenancies and the building is not a scheduled heritage building. This leaves the issue of whether the activities proposed to be relocated are <i>associated with</i> campus activity). I interpret the use of the term 'associated with' as they key part of the policy in terms of whether the proposed activity is contrary or otherwise to the policy. The Oxford English Dictionary defines associated (with respect to a company) as meaning "<i>connected or amalgamated with another company or companies</i>". I note both Aukaha and Cloud Cannon have provided statements outlining their relationship with the University of Otago. However, I consider this something slightly different than a relationship with Campus Activity (which has a specific and broad definition). I also note the policy does not require any particular depth of association, but when considered in the context of the purpose of the policy and related provisions an association is required that would distinguish the subject activity from other activities of a similar nature. Almost all office activities in the City would have some relationship with the University of Otago, whether temporary or permanent. Having regard to the clear policy direction elsewhere in the 2GP, I consider that this association would need to be something substantive, not fleeting or cursory. I do not consider this has association been established in sufficient detail by the applicant and therefore consider the application to be contrary to this Policy.
Objective 18.2.2 The potential for conflict between activities within the commercial and mixed use zones and in adjoining zones is minimised, as far as practicable, through adequate separation distances and other mitigation measures which ensure: (a) the amenity of adjoining residential and recreation zoned sites is maintained; and (b) the potential for reverse sensitivity effects is minimised as far as practicable.	Given the wide range of permitted activities able to locates within the PPH Zone, I consider there is a reasonably high potential for reverse sensitivity effects being generated in the right circumstances (for example industrial activity and residential activity being permitted). As a mixed use zone this is not an unexpected outcome. In this instance the proposed activity (when taking a permitted baseline approach) does not introduce an activity to the site that is any more sensitive to reverse sensitivity effects than those which are permitted. Further to this, in terms of (a), there are no adjoining residential and recreation zone, and in terms of (b) I note office activity is not identified as a noise sensitive activity in the 2GP. I consider that the proposed activity is consistent with this policy.

Objective 18.2.3 Land use and development maintains or enhances the amenity of the streetscape, including the visual and environmental amenity for pedestrians along identified pedestrian street frontage mapped areas	Given no development activities are associated with the proposed activity, there is little opportunity to maintain or enhance the amenity of the streetscape. Furthermore, the activity is proposed to be undertaken within an existing building which contributes to the existing amenity of the streetscapes in the vicinity of the site. I consider that the proposed activity is consistent with this policy.
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Overall Objectives and Policies Assessment

- [82] With regards to the relevant objectives and policies of the Natural Hazards and Transportation section, the proposed activity is consistent with these. Further to this, the proposed activity (in part) finds support from the Manawhenua Objective.
- [83] That said, the key objectives and policies for consideration (as directed by the plan) are the Strategic Directions section and the PPH zone provisions.
- [84] The 2GP also provides guidance for the assessment of all non-complying activities in Rule 18.12.2.1 (a-c), which provides some considerations that I have addressed below.
- (a) The activity does not detract from, or preferably contributes to, the strategic directions objectives, including, but not limited to, those related to: objective 2.3.2, policies 2.3.2.1 - 2.3.2.4 and objective 2.4.3, policies 2.4.3.1 - 2.4.3.4*
- [85] In terms of the proposed activity it does not meaningfully contribute to those strategic directions highlighted in 18.12.2.1(a-c), and given the non-complying activity status this is not unexpected. Whether the activity detracts from those strategic directions is a 'mixed bag', some such as (2.4.3.1, 2.4.3.2 and 2.4.3.3) are not directly relevant. Of those I consider most important I have concluded the application is consistent with Objective 2.3.2, inconsistent with Policy 2.3.2.1 and contrary to Policy 2.3.2.2. Therefore I consider the proposed activity detracts from Policies 2.3.2.1 and 2.3.2.2.
- (b) The activity supports the purpose of the zone as outlined in Objective 2.3.2 and Objective 18.2.1.*
- [86] The purpose of the PPH zone, as a mixed-use zone is outlined in Objective 18.2.1 is to provide for a compatible mix of inner-city living, commercial, and light industrial activities. There is nothing to suggest the proposed activity (as a commercial activity) is incompatible with surrounding activities, particularly when the permitted baseline is had regard to.
- [87] With regards to Objective 2.3.2 despite the small loss of office activity from the CBD resulting from the application, the fact this activity is relocating to a location it is clearly discouraged from establishing in, cannot be seen as supporting the purpose of the zone.
- (c) The proposed activities will achieve objectives 18.2.1, 18.2.2. and 18.2.3.*
- [88] It is clear the proposed activity does not offend Objective 18.2.2 (conflict between activities) or 18.2.3 (streetscape amenity) and therefore achieve these objectives.
- [89] With respect to Objective 18.2.1 I have already identified (Paragraph 80) that the proposed activity supports the purpose of the zone. However in terms of the guidance set out in (c) above, the Objective needs to be read in its entirety – and in this instance

the key subsection is (a), which again refers to the CBD as a focus for the activities outlined in 18.2.1.a. - employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities. Whilst there will be a slight loss of activity associated with the proposed from the CBD, I have concluded above this is no more than minor.

- [90] In terms of Policy 18.2.1.3 the key part of the policy I consider the application hinges on what is meant by the term 'associated with campus activity'. I have discussed the definition of associated above. The definition of 'Campus'⁵ in the 2GP is:

Campus

The use of land and buildings by the University of Otago or the Otago Polytechnic, in the Campus Zone, for the provision of teaching, training, learning, and research. For the sake of clarity, this includes:

- *staff and student facilities, including student and staff support services, student union offices, student and staff clubs and organisations*
- *activities shared with the Dunedin Hospital*
- *administration activities*
- *amenities for staff and students that would otherwise meet the definition of public amenities; and*
- *temporary activities*

Campus is an activity in the major facility activities category.

- [91] In terms of the proposed activities it is unclear how they are associated with 'teaching, training and research'. I note that Cloud Cannon identify they undertake guest lectures in the Compute Science Department⁶. I have no doubt Aukaha undertake activities 'associated with' Campus Activity and the functioning of the University and Polytechnic, but the depth and breadth of this is not evident from the application. I consider in order for consistency with this policy direction to be contemplated, a clearer association with Campus Activity needs to be established. Based on the information provided I do not consider a clear association is evident. The activity is therefore contrary to Policy 18.2.3.
- [92] Whilst the proposal finds some support from the Objectives and Policies of the 2GP, when having regard to those priority considerations outlined in Rule 18.12.2.1 (a-c) I consider and considering these in an overall way, the above assessment indicates that the application is consistent with contrary to the key objectives and policies of the 2GP.
- [93] For completeness, I have also assessed the relevant objectives and policies of the Operative District Plan and found the proposal to be consistent with the key provisions.

Assessment of National Policy Statements (Section 104(1)(b)(iii))

- [94] National Policy Statement for Urban Development 2020 NPSUD sets out the objectives and policies for planning for well-functioning urban environments under the Resource Management Act 1991. The NPSUD came into effect on 20 August 2020. While the

⁵ There is no 2GP definition of "Campus Activity"

⁶ Application, Appendix 3

NPSUD is directed more to decision makers when preparing a District Plan, it is noted that some objectives and policies refer to ‘planning decisions’ – which includes decisions on resource consents. Relevant are Objective 1 and Policy 5:

Objective 5: Planning decisions relating to urban environments, and Future Development Strategies, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- (a) have or enable a variety of homes that:

 - (i) meet the needs, in terms of type, price, and location, of different households; and*
 - (ii) enable Māori to express their cultural traditions and norms; and**
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) support reductions in greenhouse gas emissions; and*
- (f) are resilient to the likely current and future effects of climate change.*

- [95] In respect to this application, the Committee is already directed by Section 8 of the Act to take into account the principles of the Treaty of Waitangi. With regards to Policy 1 I consider the proposed activity accords in general with the policy.

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

- [96] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Partially Operative Regional Policy Statement (PORPS) for Otago was made partially operative on 14 January 2019. The relevant Objective is:

Objective 4.5 – Urban growth and development is well designed, occurs in a strategic and coordinated way, and integrates effectively with adjoining urban and rural environments.

- [97] Given the above conclusions regarding the 2GP, it is difficult to conclude the proposal is strategic and coordinated given it is at odds with the policy direction in the 2GP.
- [98] As such, the proposal is considered to be inconsistent with the relevant objective of the PORPS.

DECISION MAKING FRAMEWORK

Part 2 Matters

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

Section 104D

- [100] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [101] Overall I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore the first 'gateway' test of Section 104D is met. Only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act.
- [102] However, only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act. In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the Dunedin City District Plan and the proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being contrary to the key objectives and policies of the 2GP. The proposed activity is therefore considered to fail the second 'gateway' test outlined by Section 104D.
- [103] In summary, the application passes the effects threshold test in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.

Section 104

- [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 be no more than minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [105] 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.
- [106] 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 contrary to the key objectives and policies of the Proposed 2GP. Regarding the weighting of plans, I note the key provision 18.2.1.3 is not subject to appeal so considerable weight can be afforded to it.
- [107] Section 104(1)(b)(iii) requires the Council to have regard to any relevant national policy statement. This report concluded that application would be consistent with the relevant provisions of the NPS-UD.

- [108] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is inconsistent with the relevant objective in the PORPS.

Other Matters

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

Change in Planning Framework

- [110] As an observation, with respect to the zoning of the subject site, it is worth briefly exploring the change of direction between the Operative Plan and Proposed 2GP. Under the Operative Plan, the site was zoned Industrial 2, which permitted only Industrial Activity, Residential Activity and Recreational Activity. Commercial Activity (which includes a Commercial Office) is a non-complying activity. This has not changed with the 2GP, however the 2GP includes the Policy 'test' 18.2.1.3 that essentially singles out 2 activities to be avoided – retail and office – unless they are associated with Campus Activity.

A True Exception?

- [111] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.
- [112] In this regard, I consider that the proposed activity represents a challenge to the Proposed 2GP. The 2GP has adopted a top down approach to protecting the CBD, with increasing particularity⁷ moving from the Strategic Directions section (Objective 2.3.2 and Policy 2.3.2.2) down to particular zone provisions (Policy 18.2.1.3). As identified above, the specific policy direction in the PPH Zone is that office activity is to be avoided ('not allowed' in the PPH Zone) unless associated with Campus Activity. Therefore I do not consider the application, as it stands, is a true exception. It should be also noted there remains a vacant space in the building and if this application is granted, there would be a reasonable expectation that almost any office activity seeking to locate there would be granted consent; likewise if any of the other existing tenants were to move on. I therefore consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.
- [113] For the above reasons, I consider that approval of the proposal will undermine the integrity of the 2GP. The 2GP is very clear the activity for which consent is sought should not be allowed in the PPH Zone, unless it is associated with campus activity. I consider this association has not been established.

CONCLUSION

- [114] Having made the above assessment of the actual and potential effects of the proposed activity, and the contents of the relevant planning documents, I recommend that the application be refused.

⁷ JJ Limited v Dunedin City Council Decision No. [2021] NZEnvC 7 (Attached in Appendix 4).

Report prepared by:



Shane Roberts
Consultant Planner

19 February 2021
Date

Report checked by:



Campbell Thomson
Senior Planner

19 February 2021
Date

APPENDIX 1: THE APPLICATION

APPLICATION NUMBER:	LUC-2020-601
RELATED APPLICATIONS/LICENCES:	ABA-2020-2250

PLANNING APPLICATION DETAILS FORM

Property Address	266 Hanover Street Dunedin			
Property Description:	Property No: 5027736			
	Legal Description: LOT 1 DP 19139			
First Contact: (Applicant)	Name:	Kelso Trust Company Limited		
	Mail Address:	C/O Southern Planning Solutions, 30 Kerry Street, Alexandra 9320		
	Contact Email:	kirstyn@planningsouth.nz		
	Phone Number:	027 308 8950		
	Method of Service	Preferred Method - Email		
Second Contact: (Agent)	Name:			
	Mail Address:			
	Phone Number:			
	Contact Person:			
Description of Application:	proposed office activity			
Application Type:	Land Use Consent			
Fast Track?				
Consent Type:	Commercial Activity	Consent Nature	Commercial Offices	
Major Category	Land Use Category C			
Minor Category	Non-Notified - Non Complying			
Senior Planner or Responsible Officer:	Planning Consultant			
Lodgement Date:	26 November 2020	Lodgement Officer:	Tracey Diack	
Amount Paid:	\$1,650.00	Invoice Number:	838502	
Waived: ☐				
Application Requirements	Signed Application Form		Copy of Title	
	Locality Plan		Site Plan	
	Plans and Elevations		AEE	
	Affected Persons Consent			
Counter Comments:				



APPLICATION FORM FOR A RESOURCE CONSENT

PLEASE FILL IN ALL THE FIELDS

Application details

I/We

(must be the FULL name(s) of an individual or an entity registered with the New Zealand Companies Office. Family Trust names and unofficial trading names are not acceptable: in those situations, use the trustee(s) and director(s) names instead) hereby apply for:

☒ Land Use Consent ☐ Subdivision Consent

I opt out of the fast-track consent process: ☐ Yes ☐ No

(only applies to controlled activities under the district plan, where an electronic address for service is provided)

Brief description of the proposed activity:

To establish offices within the existing building at 266 Hanover Street

Have you applied for a Building Consent? ☒ Yes, Building Consent Number ABA ☐ No

Site location/description

I am/We are the: (☒ owner, ☐ occupier, ☐ lessee, ☐ prospective purchaser etc) of the site (tick one)

Street address of site:

Legal description:

Certificate of Title:

Contact details

Name: (☐ applicant ☒ agent (tick one))

Address:

Postcode:

Phone (daytime):

Email:

Chosen contact method (this will be the first point of contact for all communications for this application)

I wish the following to be used as the address for service (tick one): ☒ Email ☐ Post ☐ Other:

Ownership of the site

Who is the current owner of the site?

If the applicant is not the site owner, please provide the site owner's contact details:

Address:

Postcode:

Phone (daytime):

Email:

Planning Application Fees Payment Details (Who are we invoicing)

THIS FORM MUST BE COMPLETED FOR ALL PLANNING APPLICATIONS THAT ATTRACT A FEE.

This information is required to assist us to process resource consent invoices and refunds at lodgement and the end of the process. If you have any queries about completing this form, please email planning@dcc.govt.nz

ALL FIELDS ARE MANDATORY

Deposit Payment Payee Details:

Full Name of Deposit Payee (Person or Company): Kelso Trust Company Limited

Mailing Address of Deposit Payee (please provide PO Box number where available):

PO Box 5722 Dunedin 9054

Email Address of Deposit Payee

Daytime contact phone number

Important Note: The Payee is automatically the debtor of record. Any additional cost or unspent portion of the deposit will be attributed to the debtor, unless otherwise specified below:

Details required for a Further Invoice or Refund (if either is applicable):

Full Name of Person or Company to be invoiced (or as above): As above

Mailing Address (or as above): as above

Email Address for invoice or remittance advice to be sent to (or as above): as above

Bank Account Name: Kelso Trust Company Limited

Account Number:

* Full Bank Account details for Person or Company to be paid refund

* *Must include the Person/Company name the bank account is in, the bank account number and either a screen shot of it from your internet banking, a scan of the bank statement header or a scan of a deposit slip.*

Fees

Council recovers all actual and reasonable costs of processing your application. Most applications require a deposit and costs above this deposit will be recovered. A current fees schedule is available on www.dunedin.govt.nz or from Planning staff. Planning staff also have information on the actual cost of applications that have been processed. This can also be viewed on the Council website.

Development contributions

Your application may also be required to pay development contributions under the Council's Development Contributions Policy. For more information please ring 477 4000 and ask to speak to the Development Contributions Officer, or email development.contributions@dcc.govt.nz.

Occupation of the site

Please list the full name and address of each occupier of the site:

See attached

Monitoring of your Resource Consent

To assist with setting a date for monitoring, please estimate the date of completion of the work for which Resource Consent is required. Your Resource Consent may be monitored for compliance with any conditions at the completion of the work. (If you do not specify an estimated time for completion, your Resource Consent, if granted, may be monitored three years from the decision date).

within 12 months of issue

(month and year)

Monitoring is an additional cost over and above consent processing. You may be charged at the time of the consent being issued or at the time monitoring occurs. Please refer to City Planning's Schedule of Fees for the current monitoring fee.

Detailed description of proposed activity

Please describe the proposed activity for the site, giving as much detail as possible. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please provide proposed site plans and elevations.

See attached

Description of site and existing activity

Please describe the existing site, its size, location, orientation and slope. Describe the current usage and type of activity being carried out on the site. Where relevant, discuss the bulk and location of buildings, parking provision, traffic movements, manoeuvring, noise generation, signage, hours of operation, number of people on-site, number of visitors etc. Please also provide plans of the existing site and buildings. Photographs may help.

See Attached

(Attach separate sheets if necessary)

District plan zoning

What is the District Plan zoning of the site? Prince, Parry Harrow zone - mixed use

Are there any overlaying District Plan requirements that apply to the site e.g. in a Landscape Management Area, in a Townscape or Heritage Precinct, Scheduled Buildings on-site etc? If unsure, please check with City Planning staff.

See attached

Breaches of district plan rules

Please detail the rules that will be breached by the proposed activity on the site (if any). Also detail the degree of those breaches. In most circumstances, the only rules you need to consider are the rules from the zone in which your proposal is located. However, you need to remember to consider not just the Zone rules but also the Special Provisions rules that apply to the activity. If unsure, please check with City Planning staff or the Council website.

See attached

Affected persons' approvals

I/We have obtained the written approval of the following people/organisations and they have signed the plans of the proposal:

Name: See attached

Address:

Name:

Address:

Please note: You must submit the completed written approval form(s), and any plans signed by affected persons, with this application, unless it is a fully notified application in which case affected persons' approvals need not be provided with the application. If a written approval is required, but not obtained from an affected person, it is likely that the application will be fully notified or limited notified.

Assessment of Effects on Environment (AEE)

In this section you need to consider what effects your proposal will have on the environment. You should discuss all actual and potential effects on the environment arising from this proposal. The amount of detail provided must reflect the nature and scale of the development and its likely effect. i.e. small effect equals small assessment.

You can refer to the Council's relevant checklist and brochure on preparing this assessment. If needed there is the Ministry for the Environment's publication "A Guide to Preparing a Basic Assessment of Environmental Effects" available on www.mfe.govt.nz. Schedule 4 of the Resource Management Act 1991(RMA) provides some guidance as to what to include.

See attached

(Attach separate sheets if necessary)

The following additional Resource Consents from the Otago Regional Council are required and have been applied for: ☐ Yes ☒ No
☐ Water Permit ☐ Discharge Permit ☐ Coastal Permit ☐ Land Use Consent for certain uses of lake beds and rivers ☒ Not applicable

Assessment of Objectives and Policies

In this Section you need to consider and assess how your application proposal aligns with the relevant objectives and policies in the District Plan relating to your activity. If your proposal is a discretionary or non-complying activity under the District Plan more attention to the assessment will be necessary as the objectives and policies of the District Plan may not always be in support of the proposed activity.

See attached

Declaration

I certify that, to the best of my knowledge and belief, the information given in this application is true and correct.

I accept that I have a legal obligation to comply with any conditions imposed on the Resource Consent should this application be approved.

Subject to my/our rights under section 357B and 358 of the RMA to object to any costs, I agree to pay all the fees and charges levied by the Dunedin City Council for processing this application, including a further account if the cost of processing the application exceeds the deposit paid.

Signature of: Applicant ☒ Agent (tick one):

Kirstyn Lindsay

26 November 2020
Date:

Privacy – Local Government Official Information and Meetings Act 1987

You should be aware that this document becomes a public record once submitted. Under the above Act, anyone can request to see copies of applications lodged with the Council. The Council is obliged to make available the information requested unless there are grounds under the above Act that justify withholding it. While you may request that it be withheld, the Council will make a decision following consultation with you. If the Council decides to withhold an application, or part of it, that decision can be reviewed by the Office of the Ombudsmen.

Please advise if you consider it necessary to withhold your application, or parts of it, from any persons (including the media) to (tick those that apply):

- ☐ Avoid unreasonably prejudicing your commercial position ☐ Protect information you have supplied to Council in confidence
- ☐ Avoid serious offence to tikanga Māori or disclosing location of waahi tapu

What happens when further information is required?

If an application is not in the required form, or does not include adequate information, the Council may reject the application, pursuant to section 88 of the RMA. In addition (section 92 RMA) the Council can request further information from an applicant at any stage through the process where it may help to a better understanding of the nature of the activity, the effects it may have on the environment, or the ways in which adverse effects may be mitigated. The more complete the information provided with the application, the less costly and more quickly a decision will be reached.

Further assistance

Please discuss your proposal with us if you require any further help with preparing your application. The Council does provide pre-application meetings without charge to assist in understanding the issues associated with your proposal and completing your application. This service is there to help you.

Please note that we are able to provide you with planning information but we cannot prepare the application for you. You may need to discuss your application with an independent planning consultant if you need further planning advice.

City Planning Staff can be contacted as follows:

In Writing: Dunedin City Council, PO Box 5045, Dunedin 9054

In Person: Customer Services Centre, Ground Floor, Civic Centre, 50 The Octagon

By Phone: (03) 477 4000 By Email: planning@dcc.govt.nz There is also information on our website at www.dunedin.govt.nz

Information requirements

Completed and Signed Application Form	Description of Activity and Assessment of Effects
Site Plan, Floor Plan and Elevations (where relevant)	Written Approvals
Bank account details for refunds	Application Fee (cash, cheque or EFTPOS only; no Credit Cards accepted)
Certificate of Title (less than 3 months old) including any relevant restrictions (such as consent notices, covenants, encumbrances, building line restrictions)	
Forms and plans and any other relevant documentation signed and dated by Affected Persons	

In addition, subdivision applications also need the following information:

Number of existing lots	Number of proposed lots	Total area of subdivision	The position of all new boundaries
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In order to ensure your application is not rejected or delayed through requests for further information, please make sure you have included all of the necessary information. A full list of the information required for resource consent applications is in the Information Requirements Section of the District Plan.

OFFICE USE ONLY

Has the application been completed appropriately (including necessary information)? Yes No

Application: Received Rejected

Received by: Counter Post Courier Other:

Comments:

(Include reasons for rejection and/or notes to handling officer)

Planning Officer:

Date:

**RESOURCE CONSENT APPLICATION FOR LAND USE CONSENT
TO ESTABLISH OFFICES WITHIN AN EXISTING BUILDING.**

LOCATION: 266 HANOVER STREET, DUNEDIN

APPLICANT: KELSO TRUST COMPANY LIMITED

ADDRESS FOR SERVICE: KIRSTYN LINDSAY
30 KERRY STREET
ALEXANDRA 9320

DATE: 26 NOVEMBER 2020

**THIS APPLICATION IS PREPARED IN ACCORDANCE WITH SCHEDULE 4 OF
THE RESOURCE MANAGEMENT ACT 1991**

INTRODUCTION

The applicant, Kelso Trust Company Limited, seeks resource consent to establish offices within the existing building at 266 Hanover Street.

PROPOSAL

The applicant seeks to establish offices within the existing building at 266 Hanover Street. The site is currently occupied by community support and office activity along with a gym. As shown on the plans attached as Appendix 1 to this application, the ground floor is occupied by Anglican Family Care with a floor space of 611m² and Sports Med Medical Centre with a floor area of 422m². The first floor of the building is vacant. The second floor is occupied by a gym and has recently undergone a re-fit authorised under ABA-2019-171 and the remainder of the second floor is vacant. The existing activities are authorised by LUC-2015-02 and LUC-2015-02/A. No external changes are proposed, except for a new external lift well and carpark area shown on the plans and which are previously authorised.

The applicant has secured tenants who wish to occupy the vacant space. On the first floor with be a tech company with a floor area of 610m². The applicant advises that the tech company, Cloud Cannon, is currently considering two sites; with the first site being this one and the second site located outside of Dunedin. Cloud Cannon note a number of desirable features of the building at 266 Hanover St including being earthquake and fire code compliant, wheelchair accessible, large open plan floor space, proximity to the University Campus with whom the company regularly interacts with, and the connectivity of the site in respect of public transport and cycle ways. The adjacent area on the first floor will also be fitted out in office space for either a new tenant or expansion of an existing tenancy.

The vacant second floor area will be occupied by Aukaha Limited and its affiliated organisation Ahika Limited. Aukaha Limited identified that it is incredibly difficult to find a space in the city where it is able to meet the needs and aspirations of its organisation. In the past year or two, Aukaha Ltd has grown significantly and is currently located over two separate sites, which has become extremely challenging for its teams, board and clients. Aukaha is required to respond to its community and treaty partners as a collective organisation and given the demand for its services, it finds it more challenging to do that spread over two sites. Aukaha further note

that this site is located directly upon a waka landing site that is significant to Manawhenua. This connection to the land factored into the decision of Aukaha to settle on this site.

Another reason for selecting these premises was because of the size and location, which is very near to many of the developments Aukaha is involved with such as the Hospital build, University and Polytech development, as well as Council activities. The site is able to provide nearby parking and transportation options which is becoming a challenge in its current location. Aukaha also appreciated the features the building can provide, such as natural light, exposed brick and timber and feel this provides a more natural environment for staff while allowing for options such as charging stations for electric bikes etc and other technological innovations. The space allows Aukaha to hold hui and cultural and other workshops that are important to mana whenua and its partners. It also allows it to provide manaakitaka to its staff and manuhere in a manner where it is able to uphold its cultural values and practices.

SITE DESCRIPTION

The subject is legally described as Lot 1 Deposited Plan 19139, comprising an area of 1530m² more or less. The property is held in Record of Title 41879 attached as Appendix 2. There are no relevant interests registered against the title.



Image 1: Google Street view looking northeast



Image 2: Google Street view looking north

Site History

The building was established on the site in 1923 and was a custom-built factory and showroom for W Nees and Sons Limited. The building has had various retail and office activities on the site since that time, including McKenzie and Willis Furniture who vacated the premises in 2013. LUC-2015-02 was granted in 2015 and authorised a community support activity (Anglican Family Care) at ground level.

At the time of the 2015 consent, the other existing activities identified as operating from the building. These included World Gym, which occupied a portion of the first floor and the whole of the second floor. The assessment of the 2015 Land use consent found that the gym activity was lawfully established. On the remainder of the first floor of the building was the Sports Med Medical Centre. These activities were addressed and authorised as part of the 2015 consent.

With regard to on-site car parking, the 2015 consent required that two car parks be allocated to the World Gym and seven onsite car parks be allocated to Anglican Family Care. No car parks were allocated to Sports Med. In addition to its on-site car parking requirements, Anglican Family Care were required by way of condition of consent to lease six off-site car parks from surrounding areas.

In July 2015, the 2015 consent was varied and provided for Sports Med Medical Centre to relocate from the first floor to the vacant floor adjacent to Anglican Family Care. The overall floor area of Sports Med remained largely unchanged.

Two areas within the building are vacant and it was advised at the time that the 2015 consent was issued that activities within these spaces would need to comply with the underlying zone rules or additional resource consents would be required.

The building was assessed at the time of the 2015 consent by the Council's Urban Designer who considered that *"266 Hanover Street is something of a landmark building with distinctive art deco character giving good definition to the corner."*

The building was upgraded in 2014/15 for earthquake strengthening and fire safety upgrades.

Surrounding Area

The subject site is located on the corner of Hanover Street and Anzac Avenue and is assessed as a mixed-use area. Great King Street (State Highway 1) and St David Street, North Dunedin. To the southeast of the site are the Station Street Apartments. Directly to the east are Anzac Avenue, Ward Street and the main Railway Line. Further to the east are a number of heavy industrial activities. To the south is a small reserve (green space) area. To the south west are the offices of Fish and Game Otago and NIWA and to the west of Fish and Game is a commercial window treatment retailer and installer. To the west, on the corner of Hanover and Harrow Streets, is Begg Security and Fosters Mechanical Repairs. To the north fronting Harrow Street is the ELIM Church and north fronting Anzac Avenue is the building formally used as Millers studios.

There is a bus stop directly outside the building and the site is within walking distance of the University of Otago, Otago Polytechnic, the existing and proposed hospital site, stadium and CBD.

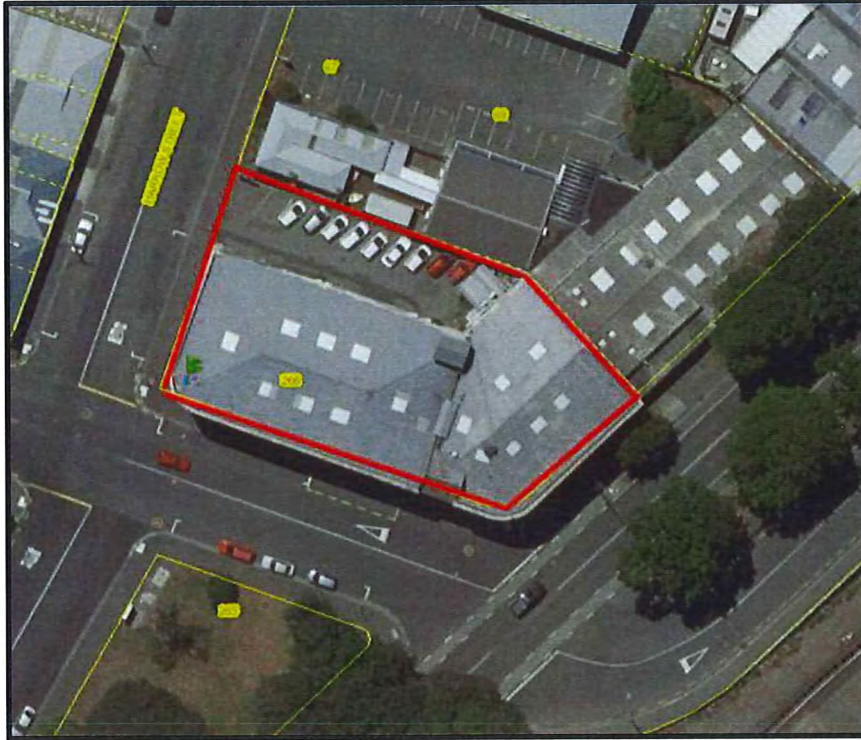


Image 3: Subject site (DCC Webmaps 2019)

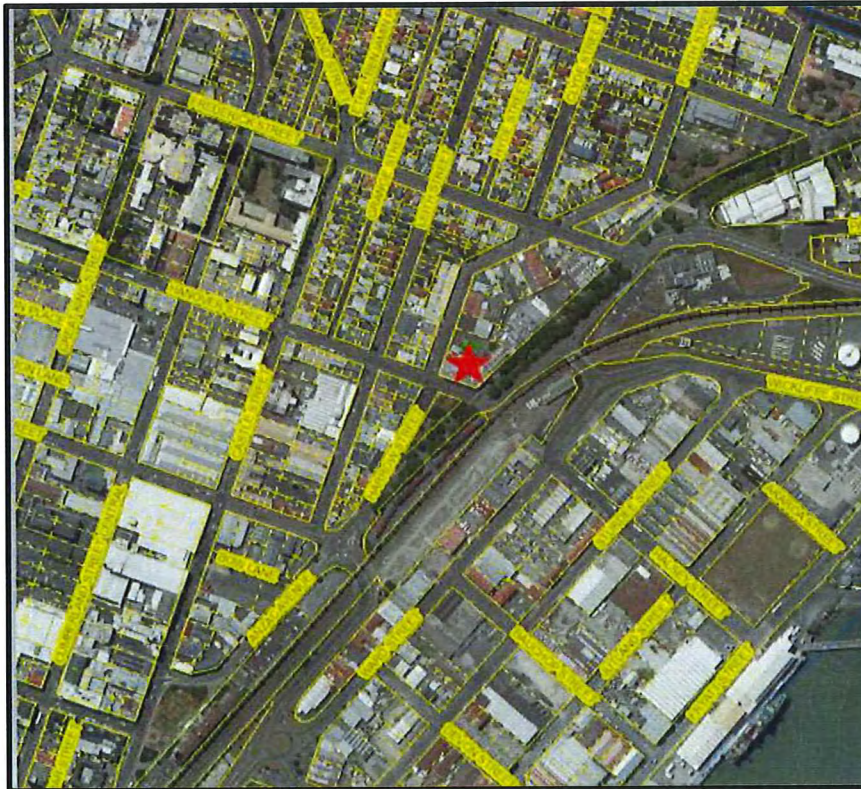


Image 4: Subject site in context (DCC Webmaps 2019)

PLANNING FRAMEWORK

Dunedin currently has two district plans, the 2006 Dunedin City District Plan (2006 Plan) and the 2GP. The decisions on the 2GP were released on 7 November 2018 and the rules of the 2GP have legal effect. The appeal period of the 2GP closed on 19 December 2018. An appeals version of the plan was released on 13 February 2019.

Section 86F of Act states that:

- (1) A rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making submissions or lodging appeals on the rule has expired and, in relation to the rule,—*
- (a) no submissions in opposition have been made or appeals have been lodged;*
 - or*
 - (b) all submissions in opposition and appeals have been determined; or*
 - (c) all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.*

Under the 2GP, the subject site is located within the Princes, Parry and Harrow Street zone (mixed-Use Zone) and the following annotations apply:

- Archaeological Alert Layer
- Hazard 3 (flood) Overlay Zone
- Hazard 3 (coastal) Overlay Zone

The hazard overlay is under appeal for this site. There are no corresponding hazard rules in the 2006 Plan. This application does not trigger any hazard rules and, as such, the hazard rules under appeal are not relevant to the site.

There are appeals for the land use rules for the Princes, Parry and Harrow Street zone but these appeals apply to hazard facility mapped areas only. The site is not located within a hazard facility mapped area and, as such, the appeals are not relevant to this proposal.



Image 5: 2GP Planning Maps - Appeals Version

There are no development, city wide or subdivision activities rules triggered by this proposal and which are under appeal.

2GP RULES

Land Use Activities

Office Activity is defined in the 2GP as:

The use of land and buildings for any of the following:

- *administrative offices where the administration of any entity, whether trading or not, and whether incorporated or not, is conducted; or*
- *professional offices, such as offices of accountants, registered health practitioners, veterinary services, training and education, solicitors, architects, surveyors and engineers.*

The following activities are managed as sub-activities of office:

- *campus-affiliated office*
- *registered health practitioners*
- *training and education; and*

- *veterinary services.*

Office is an activity in the commercial activities' category.

It is noted that this definition is under appeal. However, the scope of the appeal is narrow in that it seeks addition of "airport office" as a sub-activity. This appeal does not relate to this proposal. Overall, the proposal is for office activity.

Rule 18.3.4.14 states that offices not in a scheduled heritage building are **non-complying** activities within the Princes, Parry and Harrow Street zone. Non-complying activities are assessed under Rules 18.12.2.1 and 18.12.3.3

For completeness:

- The activity is not a noise sensitive activity such that acoustic insulation is required (Rule 18.5.1).
- No change to external lighting or current electrical servicing is proposed (Rules 18.5.2 and 18.5.3)
- The site is not within a pedestrian street frontage mapped areas (Rule 18.5.4)
- The proposal does not trigger the maximum gross floor area rules (Rule 18.5.5 Maximum Gross Floor Area)
- The proposal does not trigger the need for car parks or vehicle loading (Rules 18.5.6 and 18.5.7)
- No activity will occur which will exceed the standards set out in Rule 9.3.6 (Rule 18.5.8)
- The proposal is not for a service station (Rule 18.5.9)
- The site is not located near the National Grid (Rule 18.5.10)

Development Activities

There are no development activities as part of this proposal.

Subdivision Activities

There are no subdivision activities as part of this proposal.

City Wide Activities

There are no city wide activities as part of this proposal.

NATIONAL ENVIRONMENTAL STANDARDS

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCSC) 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 NESCSC and/or might require resource consent.

Change of Use

The Users' Guide: NES for Assessing and Managing Contaminants in Soil to Protect Human Health advises that a:

“change of land use can occur without any change of zoning or subdivision. This activity is defined separately in the NES, and captures any change in land use that occurs on a piece of land and that is reasonably likely to harm human health as defined in regulation 5(6). The key decider as to whether a land-use change falls under the NES is therefore whether, under the intended land use, the exposure to soil is reasonably likely to harm human health. This needs to be carefully evaluated for the specific situation, and may be interpreted within the purpose and context of this regulation as a serious or real and substantial risk. It requires the council officer to exercise a measure of common sense to not apply the NES, if there is no real risk associated with the proposed land-use change.”

The proposal will see the use of the site remain the same as it is now with a mix of office, commercial and community support activities. No soil disturbance is proposed. The proposal does not represent a change of use and does not trigger Regulation 8(4) of the NESCSC.

There are no other National Environmental Standards relevant to this proposal.

OVERALL ACTIVITY STATUS

Overall, the proposal is considered to be a **non-complying** activity.

STATUTORY CONSIDERATIONS

This application must be considered in terms of Section 104 of the Act. Subject to Part 2 of the Act, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *A national environmental standards;*
 - (ii) *Other regulations;*
 - (iii) *a national policy statement*
 - (iv) *a New Zealand coastal policy statement*
 - (v) *a regional policy statement or proposed regional policy statement*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matters the consent authority considers relevant and reasonably necessary to determine the application.*

The application is assessed as a non-complying activity. In assessing this application, regard must be given to section 104, 104B and 104D of the Act.

ASSESSMENT OF ENVIRONMENTAL EFFECTS

Section 104 of the Act requires that an assessment of environmental effects be made for this application. In making this assessment, primary consideration has been given to those matters set out in Section 18.12 of the 2GP.

Permitted Baseline and Existing Environment

Permitted Baseline

Under sections 95D(b) and 104(2) of the Resource Management Act 1991, the adverse effect of the activity on the environment if a rule in the district plan or a national environmental standard permits an activity with that effect.

The Princes, Parry and Harrow Street zone is a mixed-use zone and provides for a wide range of permitted activities including:

- Food and beverage retail
- Training and education
- Trade related and yard based retail
- Visitor accommodation
- Community and leisure activities
- Residential activities
- Industrial activities
- Emergency services

It is the effects beyond these activities which are to be assessed in relation to this proposal.

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, the existing environment comprises a large three-storied building which contains a mix of lawfully established office, gym and community support activities.

For adjacent land, the existing and reasonably foreseeable receiving environment comprises a wide range mix of office, industrial, trade related retail, community support, residential and commercial activities. The site is bounded by a State Highway 88 to the east. A green space is located to the south.

It is against this environment that the effects of the activity must be measured.

Effects of the office activity

The proposal seeks to establish office activity within an existing building where office activity already occurs. The tenants are identified for the site and the proposal will see a growing business remain within the Dunedin and an existing business merge its operation onto one site.

As established by the permitted baseline and the rule assessment, no adverse effects arising from the proposed office activity has been identified. Specifically, given there is already office activity occurring on the site, the proposal is not expected to introduce a new activity into the environment and, in this regard, no reverse sensitive effects are anticipated. Outside of the subject site, there are other office activities occurring in the area such as Fish and Game Otago and NIWA. Office activity is not identified as a noise sensitive activity and, as such, has not been identified as vulnerable to typical environmental noise generated by a mixed-use zone.

The building is one of significance for Dunedin, being part of the cityscape shown in the photos taken for the Southseas Exhibition. While not identified as a scheduled building in the 2GP, the building is somewhat unique in its location, form and history. Significant investment has occurred in the building to earthquake strengthen and bring it up to fire code. On-going occupancy of the building is essential to protect its viability.

The spaces to which this proposal relates were vacant in 2015 and no permanent long-term tenants have been found for this space since that time. The policy framework suggests that office activity may be appropriate on this site where is related to a campus activity. The owner of the site has approached the University of Otago and the Otago Polytechnic on a number of occupations but both have declined the use of the space. As such, the policy exemption offered under the 2GP is exhausted to the applicant.

In reading the policy framework, the main threat posed by office activity establishing in this environment is the potential effects on the centres hierarchy as set out in the 2GP. Both proposed tenants have indicated that they have been investigating suitable premises for quite some time and have been unsuccessful in their search.

The first proposed tenancy (Cloud Cannon) has identified a number of factors which led it to 266 Hanover Street (See letter attached as Appendix 3):

- 266 Hanover has freshly been put up to code with the national earthquake standards. Cloud Cannon want to ensure the safety of our employees following the Christchurch earthquake.
- 266 Hanover had a large enough floor plan on a single level ($> 400\text{m}^2$ and $< 800\text{m}^2$). As a fast growing company, they believe that open plan is a good way to keep a space modular and flexible. Cloud Cannon's needs fluctuate and the space needs to accommodate that. Cloud Cannon didn't find this floor plan anywhere else in the city to the standard available at 266 Hanover Street. The only other suitable site in the city was at the site now occupied by Education Perfect.
- Accessibility is extremely important to Cloud Cannon. The new lift and other features of 266 Hanover were unmatched by the other options. Many others required stairs for parts, if not the entirety, of the spaces. Cloud Cannon didn't want that form of exclusion in its company. Other landlords were unwilling to fix many of these complaints.
- The distance from the University Campus was an attractive factor. Cloud Cannon are strong advocates of the JobDun council programme and are currently in the process

of finishing its 6th and 7th summer internships. Four of the five completed internships have resulted in full time employment. This brings Cloud Cannon's total employees from Otago University to 13 including the cofounder and CTO. Cloud Cannon also have one graduate from the Polytechnic. This is a large part of its recruitment strategy and it also plans to contribute to the ecosystem in more ways. Cloud Cannon has been known to make guest lectures to the Computer science department and plan to run events and coding courses within the space. A long-term goal is to assist with diversity in this industry. Cloud Cannon hope students and professionals alike will get involved in these.

- Many of Cloud Cannon's staff take alternative forms of transportation to work. The connectivity of the bike lanes in this area is very attractive.

Given the extensive search for suitable premises within the CBD and surrounds, it is considered that the proposal will not adversely affect the vibrancy of the 2GP Centres Hierarchy. Furthermore, the location will support their link with the university and polytechnic.

The second tenant (Aukaha) has approximately 35 staff (although not all are full time) working across two sites currently (see attached letter Appendix 4). The disjointed operation is occurring due to the difficulty in finding a site which provides the floor area across a single floor, the natural light benefits and the location that this site offers. This tenant works closely with the University, Hospital and Council and, given that there are no suitable premises in the CBD, this site is a preferred alternative to enable the organisation to work holistically. The floor area also enables them to hold hui and workshops which are an integral part of their core business. They will also integrate other businesses and service providers within the space to form part of the overall cultural hub that they are seeking to create. Furthermore, this site is of cultural significance to them and this significance cannot be replicated in the CBD.

Given the extensive search for premises also undertaken by this proposed tenant, this proposal is not expected to adversely affect the vibrancy of the 2GP Centres Hierarchy.

The vacant office on the first floor without a prospective tenant is ideally reserved for the expansion of one of the currently proposed tenants should their businesses continue to grow. Alternatively, the applicant would seek to place a similar compatible activity in this space.

Overall, the main environmental threat from office activity establishing in this zone is to the Centres Hierarchy. It is considered that the proposal will not undermine the vibrancy or functionality of the Central Business District and the effects of the proposal are assessed as no more than minor.

Effects of Hazards

The subject site is identified as being within the Hazard 3 (flood) and Hazard 3 (coastal) Overlays. No development activity is proposed for the site and both proposed tenancies are not at ground level. No adverse effects arising from hazards has been identified.

Effects on Infrastructure

The proposal seeks to establish office space within the vacant floor space within the existing building. The permitted baseline provides for activities which generate a greater demand on Council's 3-waters infrastructure than the proposed office activity. A full fire design upgrade for the building occurred in 2014/15.

Overall, the effects of the proposal on the City's infrastructure are assessed as no more than minor.

Effects on Transport

The current parking demand on the site was assessed as part of LUC-2015-02. No additional parking is available within the site. Subpart 8 – Car Parking of the National Policy Statement for Urban Development 2020 (NPSUD) directs that:

If the district plan of a tier 1, 2, or 3 territorial authority contains objectives, policies, rules, or assessment criteria that have the effect of requiring a minimum number of car parks to be provided for a particular development, land use, or

activity, the territorial authority must change its district plan to remove that effect, other than in respect of accessible car parks.

Dunedin is a Tier 2 Territorial Authority and it is expected that the requirements to provide on-site car parking will be removed from the 2GP. In this instance, the activity in this zone does not generate a specific parking calculation. The site is within walking distance of the CBD, University and polytechnic, and both the current and proposed hospital sites. The site is on a main public transport route.

Overall, the effect of the proposal on the transportation network are assessed as no more than minor.

Effects of Noise

The proposed activities are both office activities and will generate minimal noise. Office activity already occurs on the site and, as such, the proposal does not introduce a new activity onto this site or within this area. Office activity is not identified as a noise sensitive activity under the 2GP and, as such, no acoustic insulation requirements are identified. No adverse effects in relation to noise have been identified.

Positive effects

The existing building is currently occupied by office activity and the proposal seeks to provide office space to two tenants. Both tenants have been looking for suitable office space with sufficient floor area on one level, natural light, wheelchair accessible, ability to work collaboratively and good links to the university, polytechnic and hospital for some time. Neither tenant has been able to find suitable office space within the existing office stock within Dunedin. Both tenancies provide for growing business within Dunedin. It is noted, this site also has cultural significance to Aukaha.

In addition, it is noted that, while not scheduled, the building is somewhat of a landmark and positively frames the corner with Hanover Street and Anzac Avenue. The building turns 100 years old in 2023. The building is of historic significant to the city and features in the

Southseas Exhibition photographs. The occupation of this building by long term tenants will ensure its viability into the future.

Overall, it is considered that there are a number of positive effects arising from the proposal.

OBJECTIVES AND POLICIES

In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the 2GP have been assessed when preparing this application.

2GP

Objective 18.2.1	
Dunedin has a well-structured and economically and socially successful range of commercial and mixed use environments based on [among other things]: - the CBD, which is the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities; - a range of mixed use zones (WP, PPH, SSYP and HE zones) around the edge of the CBD, which provide for a compatible mix of inner-city living, commercial, and light industrial activities; (under appeal)	
Policy 18.2.1.2	Enable general retail and office activities in the CBD and centres zones and restrict their establishment in other commercial and mixed use zones in order to maintain the vibrancy of existing centres.
Policy 18.2.1.3	Avoid retail and office activities in the Princes, Parry Harrow Zone unless these are associated with Campus Activity.
Assessment	The application seeks to provide a well-structured and economically and socially successful mixed use environment.

	Case law has determined that the use of an avoid policy means exactly that, avoid¹. On the face of it, the proposal is contrary to Policy 18.2.1.3. However, case law² also directs that policies are not stand alone instruments and must be considered in the context of the objective that they are trying to achieve. The policy framework seeks to establish protections around vibrancy of existing centres. When considering this proposal, it is noted that the use of this site for office space is anticipated by the 2GP, but only when this office activity is associated with campus activity. It is assumed that this is because campus offices would not logically settle in the CBD and would not threaten the CBD. The applicant has approached the University of Otago and the Otago Polytechnic on a number of occasions and has been advised that they are not interested in using this space of office activity. In this regard, the applicant has exhausted the policy exemption set out in Policy 18.2.1.3. When considering Policy 18.2.1.2, the proposed tenancies have been unable to find suitable office space within the CBD after an exhaustive search and, as such, it is considered that there are no viable locations available to them within the CBD. In this regard, the location of these tenancies at this site will not undermine the integrity of or detract from the vibrancy of the CBD and are consistent with this policy.
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¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* - [2014] NZSC 38

² *Blueskin Energy Limited v Dunedin City Council* [2017] NZEnvC 150, Paragraph [36]

	When consider the objective overall, the CBD will remain the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities and this proposal will not undermine that. Furthermore, when considering the PPH zone, commercial activities are encouraged by Objective 18.2.1 and office activities are included within the definition of commercial activities. The building is currently used for office space and the range of activities proposed are considered to be compatible with the existing activity on the site and in the area generally. Overall, it is assessed that the proposal is inconsistent with these objective and policies.
--	--

Objective 18.2.2

The potential for conflict between activities within the commercial and mixed use zones and in adjoining zones is minimised, as far as practicable, through adequate separation distances and other mitigation measures which ensure:

- a) the amenity of adjoining residential and recreation zoned sites is maintained; and
- b) the potential for reverse sensitivity effects is minimised as far as practicable.

No relevant policies	
Assessment	The building is currently used for office space and the use of the site for additional office space is anticipated however, only when this office activity is associated with campus activity. No external changes to the site are proposed and no reverse sensitivity issues have been identified. Office activity is not a noise sensitive activity. The proposal is consistent with this objective.

Objective 2.3.2: Centres hierarchy	
Dunedin has a hierarchy of vibrant centres anchored around one Central Business District Zone (CBD), which provides a focus for economic and employment growth, driven by: a) attraction of businesses to these areas based on the high level of amenity and density of activity in the area; b) opportunities for social interaction, exchange of ideas and business cooperation; c) public investment in public amenities and other infrastructure in the CBD; and d) opportunities for agglomeration benefits from the co-location of activities.	
Policy 2.3.2.2	Maintain or enhance the density and productivity of economic activity in the CBD and centres through rules that restrict retail and office activities outside these areas unless: a) they are unlikely to contribute to, or may detract from, the vibrancy of centres; or b) as provided for under Policy 18.2.1.3 or 15.2.1.5.
Policy 2.3.2.3	Manage the mixed use areas around the edge of the CBD through zones and rules that provide for a compatible mix of activities that support rather than detract from the vibrancy and vitality of the CBD and centres (Warehouse Precinct Zone, Princes, Parry and Harrow Street Zone, Smith Street and York Place Zone and Harbourside Edge Zone)
Assessment	The proposal contributes to a compatible mix of activities within the PPH zone and an agglomeration benefits from the co-location of activities on the site. The proposal will not detract from the vibrancy of the CBD as the proposed tenancies have been unable to find suitable office space within the CBD zone. No campus office activity seeks to use the space. However, it is noted that both proposed tenants have links to the university and the polytechnic and can offer support

	services to Campus activities. Overall, it is assessed that the proposal is consistent with these objective and policies.
--	---

Objective 2.4.1: Form and structure of the environment

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) important green and other open spaces, including green breaks between coastal settlements;
- b) trees that make a significant contribution to the visual landscape and history of neighbourhoods;
- c) built heritage, including nationally recognised built heritage;
- d) important visual landscapes and vistas;
- e) the amenity and aesthetic coherence of different environments; and
- f) the compact and accessible form of Dunedin.

Policy 2.4.1.4	Identify and protect key aspects of the visual relationship between the city and its natural environment or heritage buildings and landmarks through rules that: a) restrict the height of buildings along the harbourside to maintain views from the central city and Dunedin's inner hill suburbs across the upper harbour toward the Otago Peninsula; and b) manage the height of buildings in the CBD to maintain a primarily low-rise heritage cityscape.
Policy 2.4.1.7	Maintain a compact city with a high degree of legibility based on clear centres, edges and connections through rules that: a) manage the expansion of urban areas

Assessment	The building is one of significance for Dunedin, being part of the cityscape shown in the photos taken for the Southseas Exhibition. While not identified as a scheduled building in the 2GP, the building is somewhat unique in its location, form and history and is considered to be a landmark building within the city. Significant investment has occurred in the building to earthquake strengthen and bring it up to fire code. On-going occupancy of the building is essential to protect its viability and, in this regard, the proposal will ensure that a key building within the Dunedin Cityscape is protected. Furthermore, it is considered that the proposal is a sustainable use of an existing resource. Overall, it is assessed that the proposal is consistent with these objective and policies.
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Objective 2.4.3 Vibrant CBD and centres	
Dunedin's Central Business District is a strong, vibrant, attractive and enjoyable space that is renowned nationally and internationally for providing the highest level of pedestrian experience that attracts visitors, residents and businesses to Dunedin. It is supported by a hierarchy of attractive urban and rural centres.	
Policy 2.4.3.4	Maintain or enhance the vibrancy and density of activity in the CBD and centres through rules that restrict the distribution of retail and office activity.
Assessment	The proposal will not detract from the vibrancy of the CBD as the proposed tenancies have been unable to find suitable office space within the CBD zone and an exhaustive search. Overall, it is assessed that the proposal is consistent in part with this objective and policy.

Objective 6.2.2	
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.	
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) any associated changes to the transportation network will be affordable to the public in the long term.
Assessment	The proposal is not expected to necessitate any changes to the transportation network or adversely impact on the safety and efficiency of the transport network. There is no parking calculation for offices at this location and the existing parks on site are already authorised and occupied by the activities on the site. The proposal is assessed as consistent with this objective and policy.

Objective 6.2.2	
Land use activities are accessible by a range of travel modes.	
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.
Assessment	No parking demand calculation is required under the 2GP rules for this activity. The site is located close to amenities, the University, CBD, stadium and Hospital (proposed and existing). The site is located on a public transport route. The proposal is assessed as consistent with this objective and policy.

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.	
Policy 9.2.1.1	Only allow land use or subdivision activities that may result in land use or development activities 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
Assessment	The building is existing and connected to Council infrastructure. There are a range of permitted land uses established under the permitted baseline which would result in a greater infrastructure demand than that proposed. Overall, it is assessed that the proposal is consistent with this objective and policy.

OVERALL OBJECTIVES AND POLICIES ASSESSMENT

Having regard to the relevant objectives and policies, the above assessment indicates that the application is consistent with those provisions set out in the 2GP.

OFFSETTING OR COMPENSATION MEASURES

In accordance with Section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures offered nor are any deemed necessary.

ASSESSMENT OF REGIONAL POLICY STATEMENTS

Section 104(1)(b)(v) of the Act requires that any relevant regional policy statements be taken into account. The Regional Policy Statement for Otago (RPS) was made operative in October 1998. Specific to this proposal are Chapter 5 and Chapter 9 which guide land use and the built environment.

The Partially Operative Regional Policy Statement for Otago (PRPS) was made partially operative on 14 January 2019. Specific to this proposal are:

- Objective 4.5 and Policies 4.5.3, 4.5.4, 4.5.5 and 4.5.7 which seeks to encourage well-designed development that reflects local character and integrates effectively with adjoining urban environments.

It is assessed that the proposal is considered consistent with both the operative and partially operative Regional Policy Statements for Otago.

OTHER PLANNING INSTRUMENTS

The following planning instrument identified in Section 104(1)(b) is considered relevant for this proposal.

National Policy Statement for Urban Development 2020 NPSUD

National Policy Statement for Urban Development 2020 NPSUD sets out the objectives and policies for planning for well-functioning urban environments under the Resource Management Act 1991. The NPSUD came into effect on 20 August 2020. While the NPSUD is directed more to decision makers when preparing a District Plan, it is noted that the proposal

seeks to reuse an existing building on the site which contains compatible activities. In this regard, it is considered that the granting of consent would be consistent with:

Objective 1: *New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

Objective 3: *Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

- a) *the area is in or near a centre zone or other area with many employment opportunities*
- b) *the area is well-serviced by existing or planned public transport*
- c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

Objective 4: *New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*

SECTION 104(1)(C) - OTHER MATTERS

Section 104(1)(c) regard to be had to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and Plan integrity are considered relevant here. 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 district plan or the proposed district plan.

In this case, the proposal is non-complying because the proposed office activity is not provided for in the zone. In this instance, it is considered that the proposal presents a relatively confined set of circumstances in that:

- The building is of historic significance but is not a scheduled building. Offices within heritage buildings are anticipated by the 2GP;

- The building will turn 100 years old in 2023 and is a key landmark within the Dunedin Cityscape;
- The building is earthquake and fire code compliant;
- The proposal is a sustainable use of an existing resource;
- Office activity is signalled as appropriate in the PPH zone where it is associated with campus activity. The Campus institutions have no interest in this site;
- There are a range of office activities already occurring on the site;
- No reverse sensitivity effects have been identified;
- The large open floor plan across a single level;
- Mobility accessible across all spaces
- No development activity will occur and no external changes, beyond those already consented, are proposed;
- The tenants identified for the site have been unsuccessful in finding suitable premises within the CBD, and in this regard, the vibrancy of the CBD is not threatened;
- The site is a former waka landing site which is of particular significance to one of the proposed tenants.

Overall, it is assessed that there are sufficient elements which set this proposal apart such that it can be considered to be a true exception. In this regard, the approval of the proposal will not undermine the integrity of 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 operative and proposed district plans.

In this instance, the proposal is non-complying as commercial offices are not provided for in the PPH zone. No adverse effects which are more than minor have been identified and the proposal is not considered to be contrary to the objectives and policies of the 2GP.

PART 2 OF THE ACT

Section 104(1) of the Act states that resource consent applications are subject to Part 2 of the Act.

The purpose of this Act is to promote the sustainable management of natural and physical resources. Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

Section 6 sets out the Matters of National Importance which are to be recognised and provided for. There are no relevant section 6 matters.

Section 7 set out the other matters that shall be given particular regard to. For this application these are:

- (b) the efficient use and development of natural and physical resources:*
- (c) the maintenance and enhancement of amenity values:*
- (f) maintenance and enhancement of the quality of the environment:*
- (g) any finite characteristics of natural and physical resources:*

The proposal seeks to ensure the continued use of an existing building. The proposal is assessed as an efficient use of a finite physical resource and will maintain the amenity of the area and the quality of the environment.

Based on the findings of the lower order planning instruments, it is assessed that the proposal gives effect to Part 2 of the Act.

NOTIFICATION

With regard to notification:

- The applicant does not request notification.
- The proposal does not relate to the exchange of reserves land, does not involve a statutory acknowledgement area and does not involve an affected protected customary rights group.
- There are no rules in the 2GP or NES which require notification.
- It is assessed that the adverse effects of the proposal on the wider environment are no more than minor when assessed in the context of the existing site and the proposed development of the site overall.

Special Circumstances

Public notification is required if there are special circumstances that warrant the application being publicly notified (s95A(9)).

Current case law has defined 'special circumstances' as those *"outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique."* Current case law outlines certain cases where the courts have considered special circumstances in relation to the public notification of resource consent applications. In particular, the court found that special circumstances are deemed to apply where there is likely to be high public interest in the proposal [*Murray v Whakatane DC* [(1997) NZRMA 433 (HC)], *Urban Auckland v Auckland Council* [(2015) NZHC 1382, (2015) NZRMA 235].

In this instance, it is assessed that there are no special circumstances that exist in relation to this application which warrant notification. The proposal seeks to establish office activity within an existing building which already contains office activity. Overall, it is considered that no special circumstances existing in relation to this proposal.

Affected Parties

The environmental effects of the proposal have been assessed as no more than minor. Particular regard has been given to the effects on adjacent sites. When considering the permitted baseline and receiving environment, no particular adverse effects have been identified. Office activity is not identified as a noise sensitive activity in the 2GP and there are already office activities occurring on the site. As such, the proposal does not introduce a new sensitive activity to the area, such that reverse sensitivity effects are anticipated. No parking demand is identified in the 2GP and, given the policy direction of the NPSUD, the effects on parking are assessed as no more than minor. In addition, the site is centrally located and within walking distance to key locations. The site is also on a public transport route. Overall, it is considered that there are no parties who will be adversely affected by this proposal.

CONCLUSION

The proposal seeks to establish office activity within an existing building where office activity already occurs. Given the permitted baseline and existing environment adverse effects arising from the proposed office activity has been identified. Specifically, there is already office activity occurring on the site, and the proposal will not introduce a new activity into the environment. No reverse sensitive effects are anticipated and office activity is not identified as a noise sensitive activity.

The building is one of significance for Dunedin, being part of the cityscape shown in the photos taken for the Southseas Exhibition. The building is unique in its location, form and history. Significant investment has occurred in the building to earthquake strengthen and bring it up to fire code. On-going occupancy of the building is essential to protect its viability. The spaces to which this proposal relates were vacant in 2015 and no permanent long-term tenants have

been found for this space since that time. The policy exemption relating to campus office activity has been exhausted by the applicant.

Overall, the main environmental threat from office activity establishing in this zone is to the Centres Hierarchy. Both proposed tenants have indicated that they have been investigating suitable premises for a significant period of time and have been unsuccessful in their search. It is considered that the proposal will not undermine the vibrancy or functionality of the Central Business District and the effects of the proposal are assessed as no more than minor.

The proposal has a number of elements which sets it apart and are unlikely to be readily repeated within the site and, in this regard, the proposal is considered to be a true exception. The effects of the proposal overall are considered to be positive and assessed as generally consistent with the objectives and policies of the relevant planning instruments.

It is respectfully requested that consent be granted to this proposal on a non-notified basis.

Yours Sincerely



Kirstyn Lindsay
Resource Management Planner
Southern Planning Solutions Limited
MPLAN, MNZPI,
Accredited RMA Commissioner (Chair)



Appendix 1
Plans

Appendix 2
Record of Title



Appendix 3**Letter from Cloud Cannon**

Appendix 4**Letter from Aukaha Limited**



EXISTING SITE PLAN
SCALE - NOT TO SCALE



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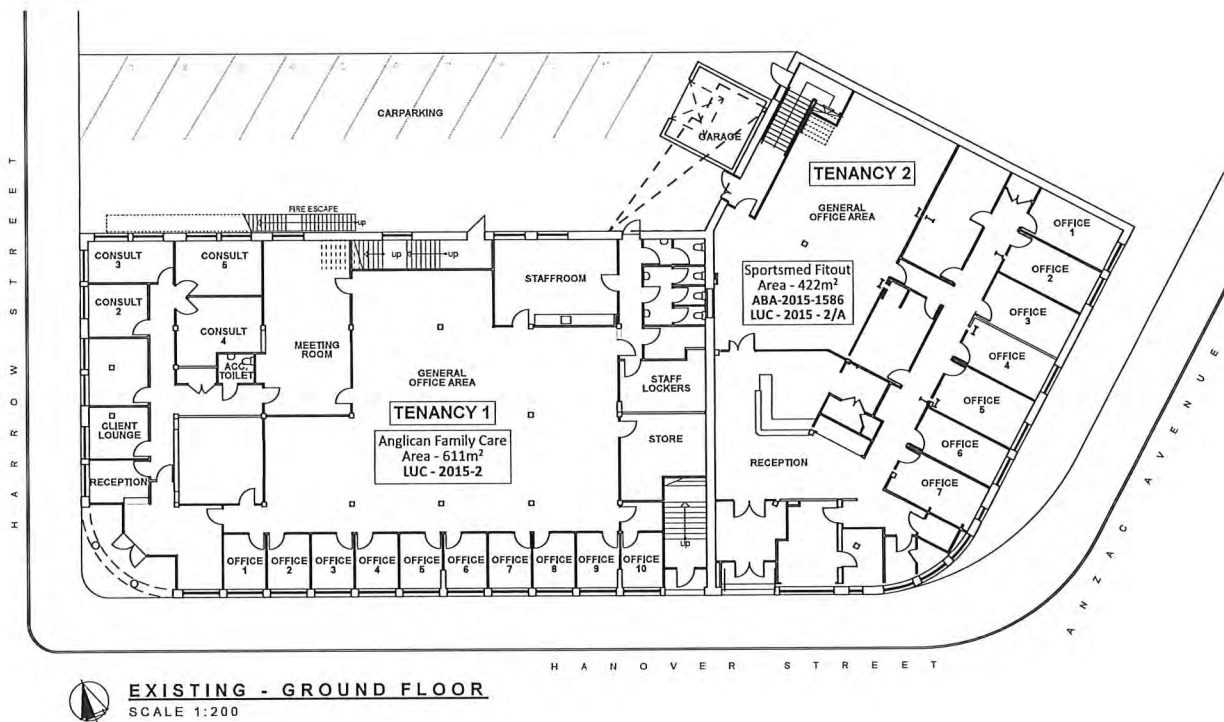


DEVELOPMENT of 266 HANOVER STREET
266 HANOVER STREET, DUNEDIN

SCALE 1:450 @ A3
DATE NOVEMBER 2020
JOB NUMBER CN20-1928
PRINT DATE 11/11/2020

RC1.1

RESOURCE CONSENT
DO NOT SCALE OFF DRAWINGS. DIMENSIONS TO BE VERIFIED ON SITE PRIOR TO CONSTRUCTION



EXISTING - GROUND FLOOR
SCALE 1:200



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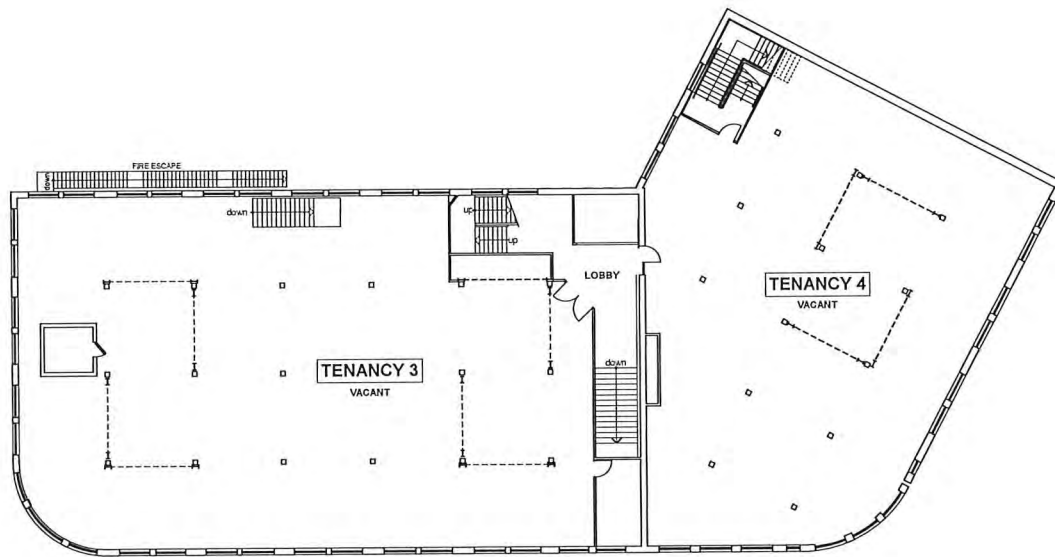


DEVELOPMENT of 266 HANOVER STREET
266 HANOVER STREET, DUNEDIN

SCALE 1:200 @ A3
DATE NOVEMBER 2020
JOB NUMBER CN20-1928
PRINT DATE 11/11/2020

RC1.2

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EXISTING - FIRST FLOOR
SCALE 1:200



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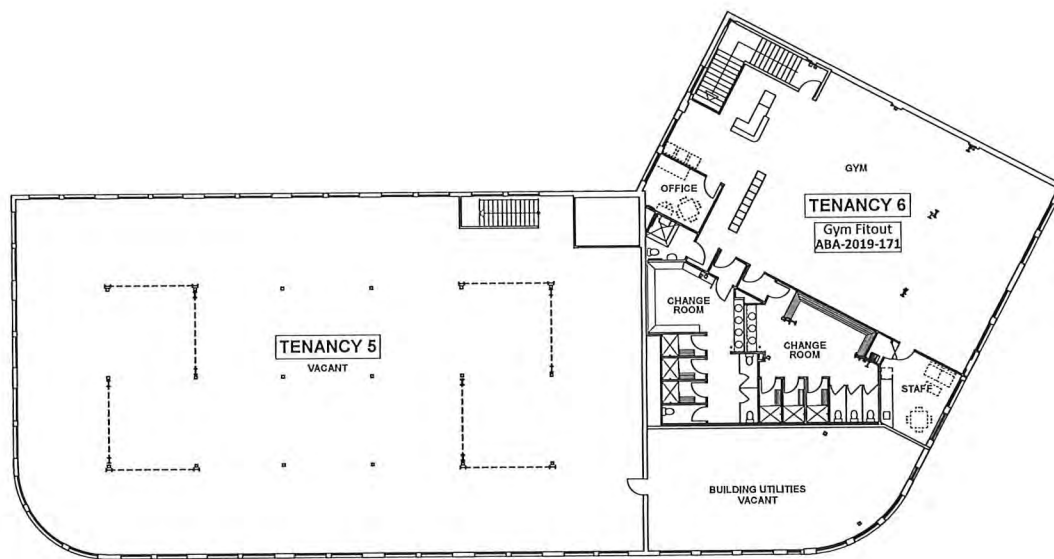


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PRINT DATE 11/11/2020

RC1.3

RESOURCE CONSENT
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EXISTING - SECOND FLOOR
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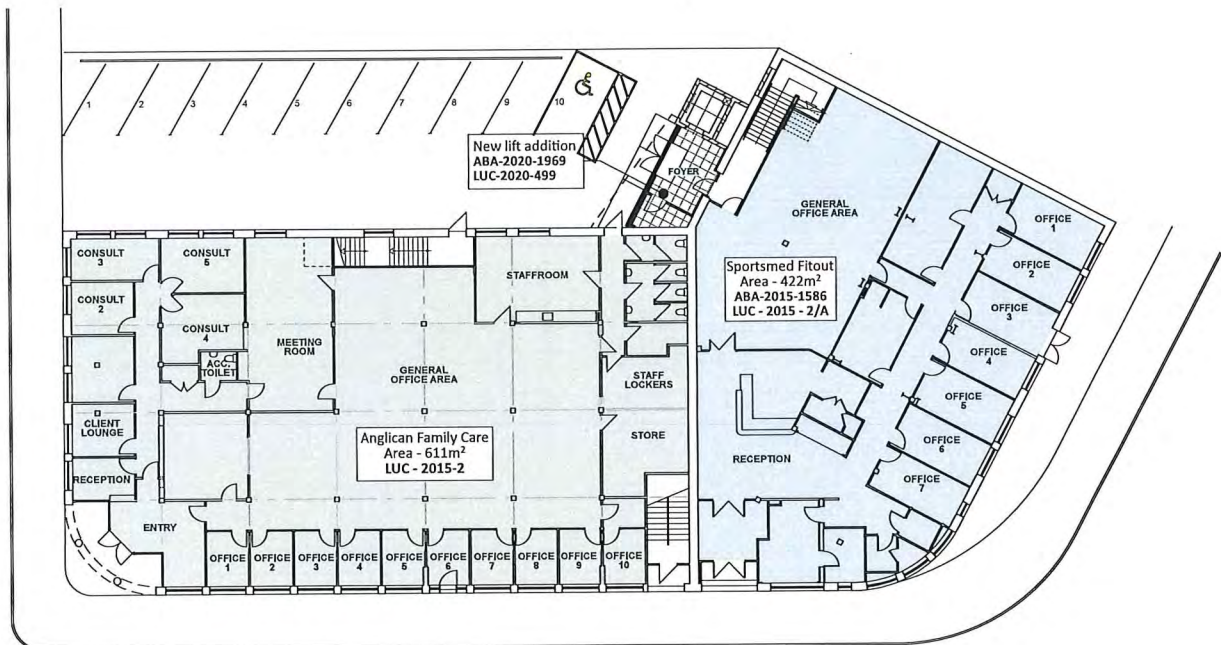


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266 HANOVER STREET, DUNEDIN

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JOB NUMBER CN20-1928
PRINT DATE 11/11/2020

RC1.4

RESOURCE CONSENT
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PROPOSED GROUND FLOOR PLAN
SCALE 1:200



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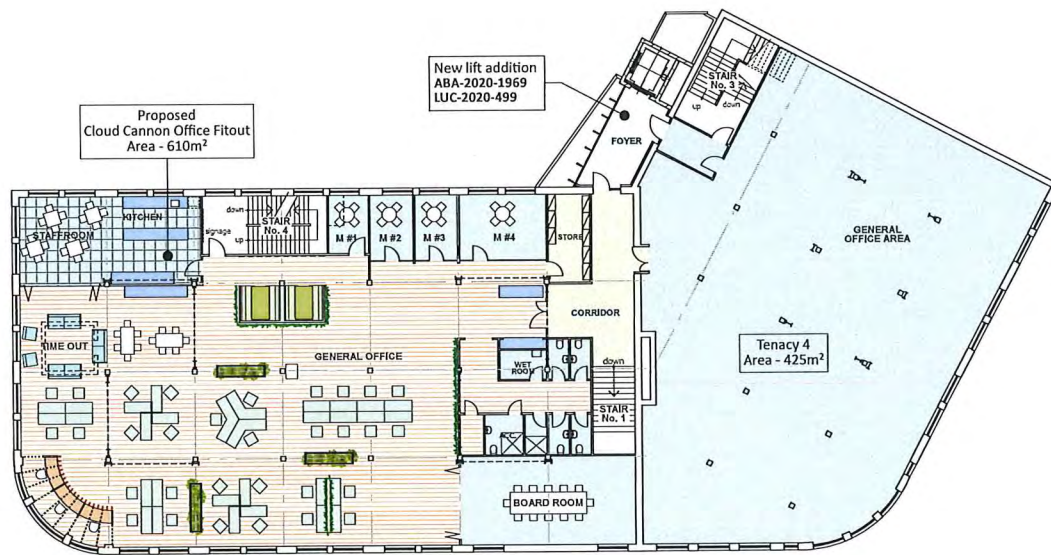


DEVELOPMENT of 266 HANOVER STREET
266 HANOVER STREET, DUNEDIN

SCALE 1:200 @ A3
DATE NOVEMBER 2020
JOB NUMBER CH20-1928
PRINT DATE 11/11/2020

RC1.5

RESOURCE CONSENT
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PROPOSED FIRST FLOOR PLAN
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RC1.6

RESOURCE CONSENT
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PROPOSED SECOND FLOOR PLAN
SCALE 1:200



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266 HANOVER STREET, DUNEDIN

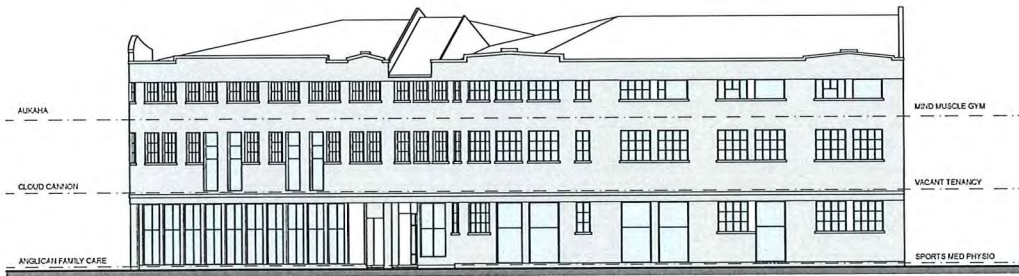
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RC1.7

RESOURCE CONSENT
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SOUTH ELEVATION
SCALE 1:200 HANOVER STREET



SOUTH EAST ELEVATION
SCALE 1:200 ANZAC AVENUE



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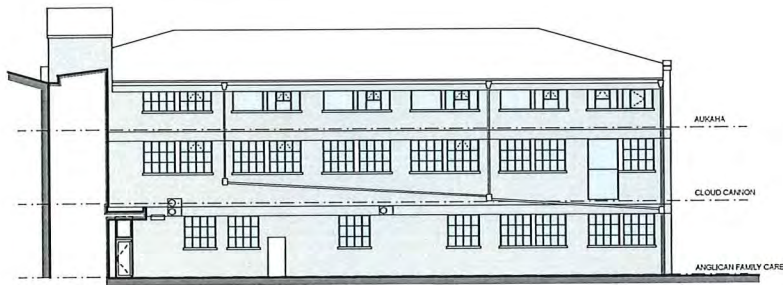


DEVELOPMENT of 266 HANOVER STREET
266 HANOVER STREET, DUNEDIN

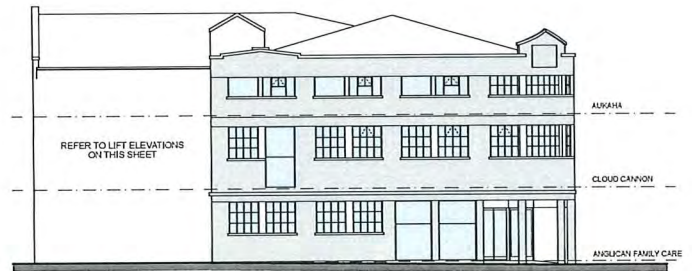
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PRINT DATE 11/11/2020

RC1.8

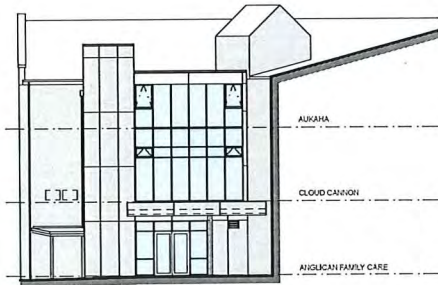
RESOURCE CONSENT
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**DRIVEWAY ELEVATION**

SCALE 1:200

**NORTH WEST ELEVATION**

SCALE 1:200 HARROW STREET

**LIFT ELEVATION**

SCALE 1:200



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 JOB NUMBER CH20-1928
 PRINT DATE 11/11/2020

RC1.8

RESOURCE CONSENT
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**RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD
Search Copy**



Identifier 41879
Land Registration District Otago
Date Issued 17 May 2002

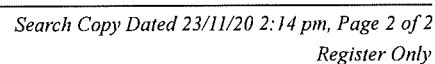
Prior References
OT11C/1357

Estate	Fee Simple
Area	1530 square metres more or less
Legal Description	Lot 1 Deposited Plan 19139

Registered Owners
Kelso Trust Company Limited

Interests

10902833.4 Mortgage to Westpac New Zealand Limited - 12.9.2017 at 3:38 pm





Kirstyn Lindsay <kirstyn@planningsouth.nz>

Fwd: Resource Consent Feedback

Kirstyn Lindsay <kirstyn@planningsouth.nz>
To: Kirstyn Lindsay <kirstyn@planningsouth.nz>

Tue, Nov 24, 2020 at 2:59 PM

----- Original Message -----

From: George Phillips <george@cloudcannon.com>
To: Martyn Ballantyne <mdsballantyne@xtra.co.nz>
Date: 19 November 2020 at 11:55
Subject: Resource Consent Feedback

Hi Martyn,

We are sorry to hear our future space may be trouble due to resource consent. In this email I will cover the reasons we feel 266 Hanover is our ideal location.

We started searching for a new location late 2019 and came across 266 Hanover during December. At that time we were a 9 person company that was quickly growing out of their space. We are now a 23 person company which has moved into an intermediary location which is already feeling tight. We must have looked at ~50 locations before deciding to move ahead with 266 Hanover Street. Our reasons for moving ahead were:

1. 266 Hanover has freshly been put up to code with the national earthquake standards. We want to ensure the safety of our employees following the Christchurch earthquake.
2. 266 Hanover had a large enough floor plan on a single level (> 400m² and < 800m²). As a fast growing company we believe that open plan is a good way to keep a space modular and flexible. Our needs fluctuate and our space need to accomodate that. We didn't find this floor plan anywhere else in the city to the standard we saw. There was one space that we had our eyes on but that was taken by Education Perfect.
3. Accessibility is extremely important to us. The new lift and other features of 266 Hanover were unmatched by the other options. Many others required stairs for parts, if not the entirety, of the spaces. We didn't want that form of exclusion in our company. Other landlords were unwilling to fix many of these complaints.
4. The distance from the University Campus was an attractive factor. We are big advocates of the JobDun council programme. We are now in the process of finishing our 6th and 7th summer internships. 4 of the 5 completed internships have resulted in full time employment. This brings our total employees from Otago University to 13 including my cofounder and I. We also have 1 graduate from the Polytechnic. This is a large part of our recruitment strategy and we also plan to contribute to the ecosystem in more ways. We have been known to make guest lectures to the Computer science department. We plan to run events and coding courses within the space. A long term goal is to assist with diversity in this industry. We hope students and professionals alike will get involved in these.
5. Many of our staff take alternative forms of transportation to work. The connectivity of the bike lanes in this area is very attractive.

I hope this answers all your questions and assists with the resource consent application. We are extremely excited to move into our space.

Cheers,
George

George Phillips
CTO at CloudCannon

Email: george@cloudcannon.com
Phone: (+64) 27 381 0089
Website: cloudcannon.com

24/11/2020

Southern Planning Solutions Mail - Fwd: Resource Consent Feedback



Kirstyn Lindsay <kirstyn@planningsouth.nz>

Fwd: 266 Hanover St - Office Lease

Kirstyn Lindsay <kirstyn@planningsouth.nz>
To: Kirstyn Lindsay <kirstyn@planningsouth.nz>

Tue, Nov 24, 2020 at 11:27 AM

----- Original Message -----

From: Nicola Morand <nicola@aukaha.co.nz>
To: Martyn Ballantyne <mdsballantyne@xtra.co.nz>
Date: 12 November 2020 at 10:45
Subject: 266 Hanover St - Office Lease

Kia ora Martyn (bcc'd Nicola @ DCC – kia ora Nicola)

Thanks for letting us know that there has been a request for a resource consent on the premises we are leasing and were intending to move into mid next year. I would like to take the opportunity to impress the importance of the move of Aukaha to the top floor of 266 Hanover Street and offer to provide our support if required.

As you are aware, it is incredibly difficult to find a space in the city where we were able to meet the needs and aspirations of our organisation and we were thrilled to find this space, particularly as it sits directly on a waka landing site that is significant to Manawhenua. It was with this in mind that our Board and staff selected this site to locate our services for the next decade and beyond.

Aukaha is an organisation owned by 5 Rūnaka from Waihao in South Canterbury down to Hokonui in Gore. We represent their interests over a diverse range of activity, including environmental and statutory processes, health, social, cultural and economic development. In the past year or two our organisation has grown significantly and is currently located over two separate sites, which has become extremely challenging for our teams, board and clients. We are required to respond to our community and treaty partners as a collective organisation and given the demand for our services, we do find it more challenging to do that spread over two sites

Another reason for selecting your premises in Hanover Street was because of the size and location, which is very near to many of the developments we are involved with such as the Hospital build, University and Polytech development, as well as Council activities. It was also able to provide us with parking and transportation options which is becoming a challenge in our current location – particularly as we have several staff out and about working with whānau and clients etc. We also liked the features the building can provide, such as natural light, exposed brick and timber and feel this provides a more natural environment for staff while allowing for options such as charging stations for electric bikes etc and other technological innovations.

Aukaha is intending to share premises with another Māori organisation as well as support Māori owned small businesses requiring short term space and support, this space allows us to do that as well as hold hui and cultural and other workshops that are important to mana whenua and our partners. It also allows us to provide manaakitaka to our staff and manuhere in a manner where we are able to uphold our cultural values and practices.

I understand you are now in discussions with DCC so I would like to provide our support to this kaupapa and have copied in Nicola Pinfold who may be able to pass our correspondence on to the DCC team you are working with. We would like to be kept informed should there be any delays and happy to be contacted if needed.

Kā mihi

Nicola Morand

General Manager

Cultural and Economic Development

Aukaha

Office: 268 Stuart Street

Telephone: (03) 777 3106 (DDI)

Email: nicola@aukaha.co.nz

Website: www.aukaha.co.nz



Level 1, 258 Stuart Street, P O Box 446, Dunedin 9054



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APPENDIX 2:
FURTHER INFORMATION RECEIVED



16 December 2020

Kelso Company Limited
C/o Southern Planning Solutions
30 Kerry Street
ALEXANDRA 9320

Via email: kirsytn@planningsouth.nz

Dear Kirstyn

LUC-2020 -601– 266 Hanover Street - Request for further information

Thank you for your application for a land use consent to undertake office activity at 266 Hanover Street, Dunedin. After initial assessment of your application, the Dunedin City Council has determined that further information is required pursuant to section 92 of the Resource Management Act 1991.

Requested information:

The further information required is detailed below. It will help the Council to better understand your proposed activity, its effect on the environment and the ways any adverse effects on the environment might be mitigated.

1. Both of the letters of support attached to the application indicate that cycling access / access to E—Bike charging stations is something attractive to the proposed tenants. Please clarify if any cycling related infrastructure (lockers, bike shelters, chargers etc) is being installed as part of the fit out.
2. Please provide details of traffic generation expected as a result of the proposed tenancies, including visitors and provision for delivery vehicles / frequency of deliveries.
3. Are any vehicles associated with the proposed tenants required to be stored onsite?
4. Please provide dimensions on the plans of the parking area and a demonstration that manoeuvring will comply with the provision of the 2GP. It is difficult to discern if there are any changes between the existing and proposed parking layouts – I note Car Park #10 is now accessible – did this require any alteration to the other parks onsite?
5. Can you please clarify the number of staff that will be working in each tenancy as well as the potential capacity of each tenancy?

6. With regards to the second floor fitout I note that space is provided for Ahika Limited. I note the application refers to Ahika Limited as an 'affiliated organisation' to Aukaha. Please clarify the nature of this affiliation or if Ahika Limited is a separate business entity?
7. What (if any) exterior signage is proposed?
8. Aukaha currently occupies 2 buildings in the Central Business District Zone. Given the thrust of Objective 18.2.1 and Policies 18.2.1 and 18.2.1.3, can you please provide an assessment of the effects of the vibrancy of the CBD from the 'removal' of this office activity to a zone where office activity is actively discouraged.
9. Please provide details on Cloud Cannon's current location. If they too are relocating from the CBD or Centres Zone please provide the same assessment requested (in paragraph 8) above.
10. I note both the AEE and supporting letter from Aukaha identify the site of the proposed activity as a former waka landing site. Recognising the entire Dunedin city area is a wāhi tūpuna, as it was used and valued by Manawhenua, the 2GP identifies 70 sites that are the most significant for the rūnaka. Please clarify significance of this site relative to the 2GP listed wāhi tūpuna sites.

Responding to this request:

Within 15 working days from the date of this letter you must either:

- Provide the requested information; or
- Provide written confirmation that you cannot provide the requested information within the timeframe, but do intend to provide it; or
- Provide written confirmation that you do not agree to provide the requested information.

The processing of your application has been put on hold from **16 December 2020**.

If you cannot provide the requested information within this timeframe, but do intend to provide it, then please provide:

- Written confirmation that you can provide it; and
- The likely date that you will be able to provide it by; and
- Any constraints that you may have on not being able to provide it within the set timeframe.

The Council will then set a revised timeframe for the information to be provided.

If you do not agree to provide the requested information, then please provide written confirmation of this to the Council.

Restarting the processing of your application:

The processing of your application will restart:

- When all of the above requested information is received (if received within 15 working days from the date of this letter being **16 December 2020**); or
- From the revised date for the requested information to be provided, if you have provided written confirmation that you are unable to meet the above timeframe and the Council has set a revised timeframe for the information to be provided; or
- From the date that you have provided written confirmation that you do not agree to providing the requested information; or
- 15 working days from the date of this letter (if you have not provided the requested information or written confirmation being **27 January 2021**).

Once the processing of the application restarts:

If you have provided all the requested information, then we will consider its adequacy and make a final decision on whether your application requires public or limited notification pursuant to sections 95A, 95B, 95D, 95E and 95F of the Resource Management Act 1991, or, whether any parties are considered adversely affected from whom you will need to obtain written approval in order for the proposal to be considered on a non-notified basis.

If you have not provided the requested information, then your application will continue to be processed and determined on the basis of the information that you have provided with the application:

- If the Council decides to give public or limited notification of the application, then the Council must publicly notify the application under section 95C(1) of the Resource Management Act 1991. You will be invoiced for any outstanding payment needed to make up the \$8,500 deposit required for public notification.
- If the Council decides to process the application on a non-notified basis, and all written approvals have been received, then the application must be considered under section 104 of the Resource Management Act 1991. The Council may decline the application on the grounds that it has inadequate information to determine the application. In making an assessment on the adequacy of the information, the Council must have regard to whether this request resulted in further information being made available.

Please note that requests for further information, interim correspondence and assessment of the further information can introduce additional work and therefore costs. Deposits are based on the average cost of processing similar consents in the previous year. There is normally a sizable range between the lowest and highest cost for similar consents. These additional costs incurred as a result of the further information request will be passed onto you and, as such, the final cost of processing this application may be higher than previous 12-month average for similar applications.

Please do not hesitate to contact the writer at shane.l.roberts@wsp.com if you have any questions or concerns regarding the above request or the further processing of the application.

Yours faithfully



Shane Roberts
Consultant Planner



15 January 2021

Email: shane.l.roberts@wsp.com

Dear Shane

RE: Response for further information for LUC-2020-601

Please find attached the response to your request for further information requested on 16 December 2020.

1. *Both of the letters of support attached to the application indicate that cycling access / access to E—Bike charging stations is something attractive to the proposed tenants. Please clarify if any cycling related infrastructure (lockers, bike shelters, chargers etc) is being installed as part of the fit out.*

There is a sheltered area for bike parking provided under the Lift Building consent (LUC-2020-499 and ABA-2020-1969) at the end of the car park adjacent the lift tower. This space is approximately 6m² in area. The applicant currently doesn't have any E-Bike charger stations installed but has negotiated with the tenants to install a battery charging station for E-Bikes within each tenancy. This is preferable to locating these in the bike park area due to the value of E-Bike batteries.

2. *Please provide details of traffic generation expected as a result of the proposed tenancies, including visitors and provision for delivery vehicles / frequency of deliveries.*

The subject site fronts Anzac Avenue (SH88) which has an annual average daily traffic (AADT) count of 9500 at the Frederick Street intersection. The One Network Road Classification (ONRC) identifies Hanover Street as a Primary Collector Road with an estimated AADT of 5000. Harrow Street is identified on ONRC as a Secondary Collector Road with estimated traffic AADT of 1800.

The permitted baseline provides for traffic generation associated with:

- Food and beverage retail
- Training and education
- Trade related and yard based retail
- Visitor accommodation
- Community and leisure activities
- Residential activities
- Industrial activities
- Emergency services

High Trip Generators are defined in the 2GP as the group of activities which includes:

- new or additions to parking areas that result in 50 or more new parking spaces; and
- any activities that generate 250 or more vehicle movements per day.

In this instance, the proposal will not result in 50 or more new parking spaces a day. With regard to vehicle movements, I note that 1 Bond Street (Cloud Cannon's current site), has no onsite parking and wait lists for parks are approximately 2-3 years long. About 40% of Cloud Cannon staff work at home between 2-3 days per week. Cloud Cannon staff take alternative forms of transport to work. ~20% bike and ~40% take the bus.

When considering Aukaha and Ahika's traffic generation, Aukaha currently provide parking for 2 visitors and 7 staff in various car parks which they hire in close proximity to their current office. The applicant, as part of the lease agreement, will provide a greater number of off-site leased parks to this tenant.

Any visitors to the site will be typical of standard office activity, usually by appointment only and singly or in small groups. The frequency of hui for Aukaha is hugely variable. They have hui every day and meet with clients one on one. Hui vary from 1 to 15, the larger are probably 1-2 times a fortnight and others are more frequent. Larger hui are held offsite, either at Marae or conference venues closer to our office. All visitors will be required to make use of on-street parking or paid parking in the area or public transport. The site is on good public transport routes and walkable from the university, CBD and both current and proposed hospital sites. The number of visitors to the site is expected to fall within the permitted baseline for permitted activities in the zone.

With regard to deliveries, it is noted that the activities are office activities and, once in place, deliveries to the site will generally be limited to office supplies and occasional catering events. Any deliveries are expected to be infrequent and will fall well within the permitted baseline identified for the area.

I do not expect the new activities at this site to generate more than 250 traffic movement per day and traffic movements will fall well within the permitted baseline.

3. *Are any vehicles associated with the proposed tenants required to be stored onsite?*

LUC-2015-2 assessed the car parking for the site and allocated the carparking in accordance with Condition 2 of that consent. There is no available parking on the site for these activities, otherwise, there will be a breach of the conditions for LUC-2015-2. That said, there are a number of long-term lease and short term paid parking options within close proximity to the site. I note that Condition 3 of LUC-2015-2 requires that parking for Anglican Care be sourced off site. A similar model will be applied to Aukaha Limited.

4. *Please provide dimensions on the plans of the parking area and a demonstration that manoeuvring will comply with the provision of the 2GP. It is difficult to discern if there are any changes between the existing and proposed parking layouts – I note Car Park #10 is now accessible – did this require any alteration to the other parks onsite?*

LUC-2015-2 assessed the car parking for the site and required the carparking to be undertaken in accordance with Condition 2 of that consent. While the plans approved by that application showed the mobility parks at the Harrow Street frontage (see Image 1), Condition 2 did provide flexibility for the parking configuration as follows:

The surface of all parking, associated access and manoeuvring areas shall be formed, hard-surfaced and adequately drained for their entity, and parking spaces permanently marked in accordance with the application plans. The on-site parking spaces shall be allocated as follows:

- One space for all mobility users (including gym/clinic) users
- Two spaces for World Gym
- Seven Spaces on the site shall be provided for Anglican Family Care

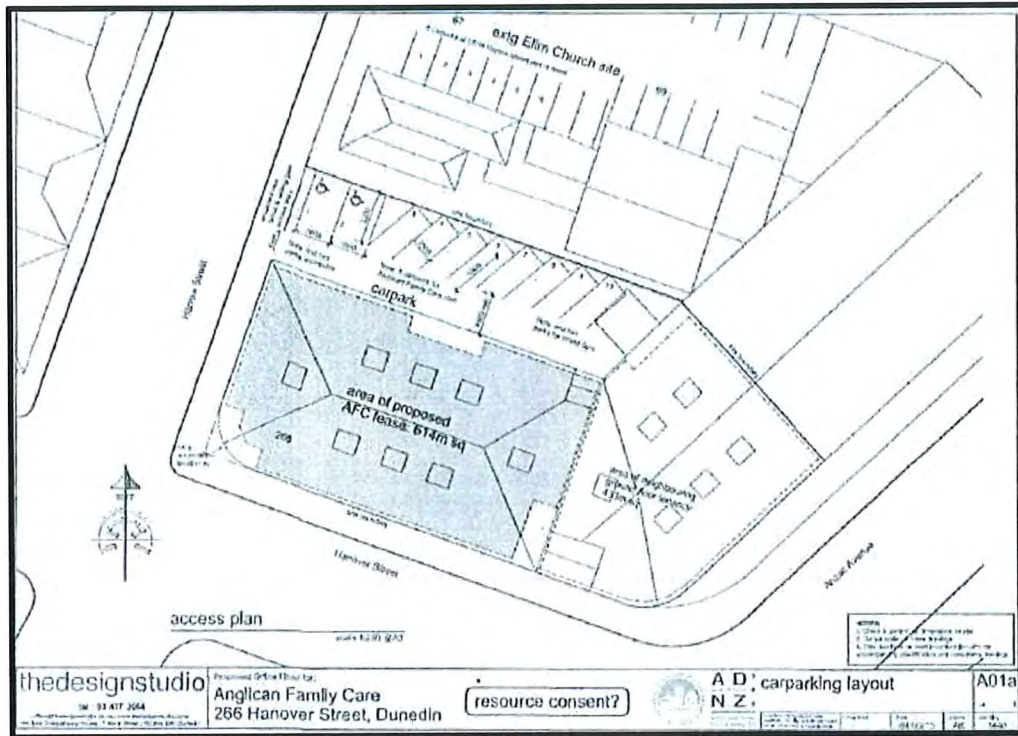


Image 1: Approved Plan for LUC-2015-2

LUC-2020-499 approved a height breach associated with the lift redevelopment (as identified on the submitted plans). It was not considered necessary to reassess the carparking at this time but the plans approved by that consent show the parking layout as shown in Image 2 below. This is the same configuration as submitted with the application. The applicant notes that they didn't need to change any of the existing park as they used space at the end of the parks created where the existing garage (shown in Image 1 above) is to be demolished.

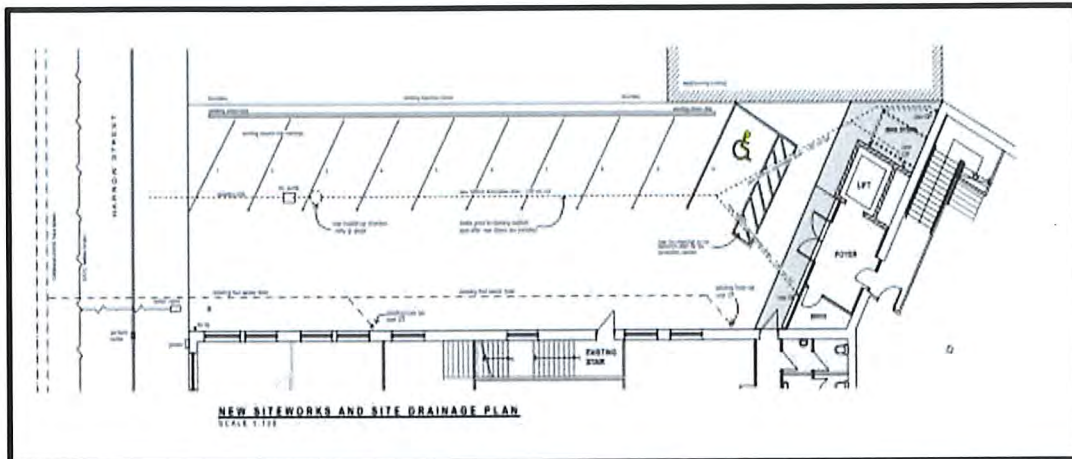


Image 2: Approved Plan for LUC-2020-499

The applicant has not been made aware of any breaches of Condition 2 of LUC-2015-2, although it is noted that the “existing site” plans submitted with the application may not have depicted the location mobility park accurately.

As no change to the parking approved by LUC-2015-2 is applied for, and no on-site parks are to be used by the proposed activities, it is considered that further assessment of the on-site parks is not required.

5. Can you please clarify the number of staff that will be working in each tenancy as well as the potential capacity of each tenancy?

- Aukaha currently have 17 FTE and four casual staff and are looking to increase staff numbers by four additional staff
- Ahika Ltd are a company of about 10-12 staff but only 8 staff work from Dunedin.
- Cloud Cannon currently have 20 FTE and this will increase to 25 FTE upon relocation. However, 40% of Cloud Cannon staff work from home 2-3 days per week.

Given the current trends in office occupancy (hot desking, timeout spaces, meeting rooms, quiet rooms, collaboration spaces and media/zoom rooms) it is difficult to identify maximum potential capacity for each tenancy as it depends how fluidly and flexibly the spaces are used. The anticipated desk numbers are shown on the plans for each space, however, one of the advantages of this site is the capacity to successfully grow the businesses, and staff numbers accordingly, without having to relocate within the medium to long term.

6. With regards to the second floor fitout I note that space is provided for Ahika Limited. I note the application refers to Ahika Limited as an ‘affiliated organisation’ to Aukaha. Please clarify the nature of this affiliation or if Ahika Limited is a separate business entity?

Ahika Limited is located at 2 Dowling Street which is zoned CBD and located on the corner of Dowling and Burlington Street. While they are a separate business, they work on projects with Aukaha and offer synergistic services.

7. What (if any) exterior signage is proposed?

No signage is applied for as part of this application. Should signage be sought in the future, this will be applied for separately.

8. *Aukaha currently occupies 2 buildings in the Central Business District Zone. Given the thrust of Objective 18.2.1 and Policies 18.2.1. and 18.2.1.3, can you please provide an assessment of the effects of the vibrancy of the CBD from the 'removal' of this office activity to a zone where office activity is actively discouraged.*

Aukaha are currently in two offices, but only one is in a CBD location (258 Stuart Street), with the other in a SSYP zone location (268 Stuart Street). The 268 Stuart Street site is a non-heritage building and, as such, office activity within this zone is a non-complying activity under Rule 18.3.4.14.

Aukaha have 12 staff and three casual staff in the SSYP location and five staff and one casual in the CBD zone site. The site at 258 Stuart has been re-leased to a new tenant and is no longer available to Aukaha after Feb/March 2021. Prior to the lease expiring, Aukaha will need to either need re-house all staff in the SSYP location or find an alternative site. Aukaha consider that the SSYP site is too small to house the current staffing numbers and no future increase in staff numbers would be possible at this site. As noted within the application, Aukaha have been unable to find suitable office space within the CBD after an exhaustive search and, as such, it is considered that there are no viable locations available to them within the CBD.

Given that the tenancy within the CBD (5 FTE and 1 Casual) has been leased to another party in early 2021, the relocation of Aukaha from the CBD site will not result in an empty office space and will not leave a gap in the CBD.

Furthermore, the majority of Aukaha's operations are occurring on a site which does not provide for office activity and they seek to relocate to a zone with the same or similar rules (i.e. transferring from one fringe zone to another fringe zone). In respect of this part of the Aukaha operation, status quo is essentially retained and there is no loss of office activity within the CBD.

The opportunity for Ahika to become a sub-tenant of Aukaha Ltd seeks to enable them to share resources and strengthen the synergistic relationship with Aukaha Limited. If a suitable premises was able to found in the CBD, then they would move to this site with Aukaha Limited.

It is considered that the relocation of these tenancies as proposed will not undermine the integrity of, or detract from the vibrancy of, the CBD. The CBD will remain the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities.

9. *Please provide details on Cloud Cannon's current location. If they too are relocating from the CBD or Centres Zone please provide the same assessment requested (in paragraph 8) above.*

Cloud Cannon are currently located at 1 Bond Street Dunedin. 1 Bond Street is zoned Warehouse Precinct. The relocation of the Cloud Cannon from this site will not adversely affect the CBD or centres hierarchy.

10. *I note both the AEE and supporting letter from Aukaha identify the site of the proposed activity as a former waka landing site. Recognising the entire Dunedin city area is a wāhi tūpuna, as it was used and valued by Manawhenua, the 2GP identifies 70 sites that are the most significant for the rūnaka. Please clarify significance of this site relative to the 2GP listed wāhi tūpuna sites.*

While the entire Dunedin city area is a wāhi tūpuna, it is important not to overlook that within this wider landscape some sites or areas are particularly significant for various reasons – e.g. tapu, taoka, particular events took place there. Many but not all sites are mapped as wāhi tūpuna in the 2GP.

Ōtākou Harbour is mapped in the 2GP and is obviously highly significant. However, because of reclamation some of the former tauraka waka (landing sites) sit outside the current harbour extent and were not specifically mapped. The new location is at one such site – Mataukareao. That these sites were not mapped does not mean they are not important, there may be particular traditions or events associated with specific sites. Sometimes specific sites may not be mapped due to sensitivity around them and the impacts of identifying them.

In terms of the work that Aukaha do, much of this is around trying to recognise/restore the relationship between mana whenua and the environment. A lot of the work is around cultural narratives, putting names back in the landscape, helping to reconnect mana whenua to the whenua, trying to make others aware of these ancestral and ongoing connections to the Kāi Tahu takiwā. Aukaha have confirmed that having an office located on a named and known site from pre-European settlement time will help greatly with this kaupapa. Despite this site not being specifically mapped in the 2GP, use of the site for these purposes aligns with Objective 2.5.1, Objective 2.5.3, Objective 14.2.1 and the supporting policies.

Yours Faithfully



Kirstyn Lindsay
Resource Management Consultant
Southern Planning Solutions Limited

Phone: 0273088950
Email: kirstyn@planningsouth.nz



APPENDIX 3:
COUNCIL OFFICER EVIDENCE

TO: Shane Roberts, Consultant Planner

FROM: Logan Copland, Planner – Transport

DATE: 19 February 2021

SUBJECT: **LUC-2020-601**

266 HANOVER STREET, DUNEDIN

APPLICATION:

Resource consent is sought to establish offices on the first and second floors on the existing building at the above site. The ground floor contains an existing office and medical centre which was authorised in 2015 under the 2006 Dunedin City District Plan.

The site is zoned Princes, Parry and Harrow Street in the 2GP. It is a corner site with frontage to Hanover Street and Harrow Street, both of which are classified as Local Roads in the 2GP's Road Classification Hierarchy, and Anzac Avenue, which is classified as a Strategic Road.

Office activities are assessed as non-complying activities in this zone. There will be no onsite car parking dedicated for the proposed office use, as the existing onsite car parking will be retained for use by the existing ground-floor tenancies (medical centre and office).

KEY TRANSPORTATION CONSIDERATIONS:

- The primary transport consideration in this instance is the actual and/or potential effects of the proposed development on the availability of kerbside parking in the vicinity of the site.

CAR PARKING*Parking demand*

Upon request for further information, the applicant has supplied the expected numbers of staff that would be onsite within the various office activities at any one time. For completeness, this is summarised below:

- Aukaha currently have 17 FTE and four (4) casual staff and are looking to increase staff numbers by four (4) additional staff. Overall, this results in up to 25 people associated with Aukaha being onsite at any one time.
- Ahika Ltd are a company of about 10-12 staff but only eight (8) staff work from Dunedin.
- Cloud Cannon currently have 20 FTE and this will increase to 25 FTE upon relocation. However, 40% of Cloud Cannon staff work from home 2-3 days per week.
- Overall, the number of people onsite associated with office activity, is understood to be up to 58 (taking into account that only eight (8) of the 12 staff from Ahika work from Dunedin).

As this activity is not provided for in the zone, there is no applicable minimum car parking requirement in the 2GP. In other zones, such as the CBD Edge Commercial North Zone, I note that office activities are permitted, with no applicable minimum car parking requirement. However, as this is not the applicable zone, car parking effects require further analysis.

The site plans indicate that the tech company, Cloud Cannon, will be located on the first floor. They will occupy 610m² of GFA for office use. Aukaha will be located on the second floor, occupying 740m² GFA for office use. This will result in a GFA of 1350m² being used for office activity on the site.

With reference to alternative trip generation/parking demand guidelines, namely NZTA Research Report 453 – Trips and parking related to land use, I note that Table C.1 indicates an 85th percentile parking demand in the order of 3.2 spaces per 100m² of gross floor area (GFA) for office activities.

Applying those rates, I calculate the first-floor office activity (Cloud Cannon) to have a parking demand in the order of 20 spaces, and the second-floor office activity (Aukaha) to have a parking demand in the order of 24 spaces. Based on these calculations, the development would result in a car parking demand of up to 44 spaces.

However, noting that the application indicates that 40% of Cloud Cannon staff typically work from home and that 60% of staff that work onsite travel via alternative transport modes (i.e. public transport and bike), the above calculation is unlikely to be entirely reflective of the actual parking demand associated with the development.

Even so, given that no onsite car parking will be provided to service the development, it is expected that a reasonably significant level of additional demand for kerbside parking in the vicinity of the site would still be generated, should the committee be of a mind to grant consent.

Kerbside parking environment

In terms of the surrounding kerbside parking environment, I note that there are:

- Three P60 spaces on Harrow Street, adjacent to the site
- Four P60 spaces on the northern side of Hanover Street, adjacent to the site
- Five P60 spaces on the southern side of Hanover Street, adjacent to the site
- The remainder of kerbside parking in the vicinity of the site is generally unpaid unrestricted parking, with only a small handful of P30s

According to a most recent Dunedin Parking Survey (2016), it can be understood that kerbside parking in the vicinity of the site generally experiences a high level of occupancy at 9am through to 3pm, at which point occupancy rates appear to slightly decrease. Occupancy is shown to decrease further at 5pm. It is therefore expected that occupancy is somewhat affected by commuter parking.

National Policy Statement on Urban Development 2020 (NPS-UD)

I have considered the NPS-UD, specifically Policy 11. The NPS-UD sets out the following direction for car parking:

- Tier 1, 2 or 3 territorial authorities must remove district plan rules, assessment criteria, policies and objectives that have the effect of setting minimum car parking rates.
- Territorial authorities must remove the provisions from their district plans without using a public plan change process (Schedule 1 of the Resource Management Act 1991 (RMA) per section 55 (2A) of the RMA.
- Territorial authorities must amend their district plans to remove car parking minimums as soon as practicable, no more than 18 months from the date of commencement of the NPS-UD.

However, I also note that 'Car Parking Fact Sheet' on the Ministry for the Environment website states:

Territorial authorities will have the ability to consider car parking effects using resource consents with a discretionary or non-complying activity status.

Given the proposed activity is a non-complying activity, it is my view that the Council retains the ability to consider car parking effects in this instance. However, I am also cognisant that the NPS-UD guides territorial authorities toward using travel demand management techniques and comprehensive parking management plans as mechanisms to manage potential car parking effects resulting from private development proposals.

In that regard, as the proposal is for an office activity, it is expected that occupants will generally be commuters travelling to the site daily, for employment purposes. On that basis, I accept that there are feasible alternative transport options available to occupants of this site. Specifically, Hanover Street, between George Street and Anzac Avenue forms part of the Central City Cycle Network as identified within the Dunedin Integrated Transport Strategy (2013). While there is currently no dedicated cycling infrastructure on Hanover Street, such infrastructure exists on the one-way pair and on Anzac Avenue. Given the relatively centralised location of the site, it is also accessible by public transport and by foot. It should also be noted that the site about 300m walking distance from the St Andrew Street car park.

Since there are alternative transport options available to occupants of this site and considering that a potential issue has been identified with respect to effects on kerbside parking occupancy the applicant must prepare and submit a comprehensive travel management plan to DCC Transport, prior to the commencement of the activity. The travel management plan must provide measures that assist with decreasing private motor car dependence when travelling to and from the site in order to reduce parking demand associated with the activity. The travel management plan must be approved by DCC Transport and put into effect, prior to commencement of the activity.

Furthermore, the applicant submits that the proximity of the site to established public cycling infrastructure forms part of their attraction to this site. On that basis, secure, covered bicycle storage must be provided on the site, along with associated changing facilities, in order to ensure that adequate provision is made for site occupants to access the site via alternative modes of transportation. The number of bicycle storage spaces should be determined as part of the development of the travel management plan, required by the above condition.

As a final comment, Transport considers that the applicant has lodged the application with full knowledge of the current level of available kerbside and off-street parking provision within the vicinity of the site. The applicant must also accept that Transport reserves the right to

review kerbside parking restrictions in the vicinity of the site in the future. An advice note is recommended to that effect.

ACCESS:

No changes are proposed with respect to the site access. Consequently, this aspect is not assessed for the purposes of this report.

GENERATED TRAFFIC:

It is considered that the effects of the proposal on the transportation network will be less than minor. It is noted that the level traffic generated by the proposed activity can be reduced through preparation and implementation of an effective travel management plan, as discussed above. A condition is recommended to that effect.

CONCLUSION

Transport considers the effects of the proposed development on the transportation network to be less than minor, subject to the following condition(s) and advice note(s):

CONDITIONS:

- (i) The applicant must prepare and submit, a comprehensive travel management plan to DCC Transport, prior to the commencement of the activity. The travel management plan must provide measures that assist with decreasing private motor car dependence when travelling to and from the site in order to reduce parking demand associated with the activity. The travel management plan must be approved by DCC Transport and put into effect, prior to commencement of the activity.
- (ii) Secure, covered bicycle storage must be provided on the site, along with associated changing facilities, in order to ensure that adequate provision is made for site occupants to access the site via alternative modes of transportation. The number of bicycle storage spaces should be determined as part of the development of the travel management plan, required by Condition (i), above.

ADVICE NOTES:

- (i) Transport considers that the applicant has lodged the application with full knowledge of the current level of available kerbside and off-street parking provision within the vicinity of the site. The applicant must also accept that Transport reserves the right to review kerbside parking restrictions in the vicinity of the site in the future.

APPENDIX 4:
ENVIRONMENT COURT DECISION 2021 NZ EnvC 7

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ

Decision No. [2021] NZEnvC 7

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under s 120 of the Act
BETWEEN	JJ LIMITED
	(ENV-2019-CHC-112)
	Appellant
AND	DUNEDIN CITY COUNCIL
	Respondent

Court: Environment Judge J E Borthwick
Environment Commissioner D J Bunting

Hearing: at Dunedin on 24 November 2020

Appearances: P J Page and S R Peirce for the appellant
S M Chadwick for the respondent

Date of Decision: 10 February 2021

Date of Issue: 10 February 2021

DECISION OF THE ENVIRONMENT COURT

- A: The appeal is declined.
- B: Costs are reserved. Any application for costs is to be filed by **Tuesday 23 February 2021** with replies by **Tuesday 9 March 2021**. In the event no application for costs is made, the court's order will be, without further decision of the court issuing, that there is no order as to costs.



REASONS

Introduction

[1] JJ Ltd is a multi-faceted, rural focused business currently operating from three sites in Mosgiel. In November 2018 JJ Ltd lodged an application with the Dunedin City Council for subdivision and land use consents to enable the company to relocate its business to a rural site at 257 Gordon Road on the outskirts of Mosgiel.

[2] The subdivision consent (if granted), would create two lots, one with an area of 4-ha and the other for the balance area of 36-ha. JJ Ltd would relocate its existing operations to the 4-ha lot and seeks land use consent for these activities.

[3] The City Council declined to grant resource consent, a decision which JJ Ltd appealed to the Environment Court.

Overview of the proposal

[4] JJ Ltd's business has outgrown the three sites from which it currently operates, and the company now desires to collocate its various activities on one site. It estimates some 20,000 m² of land is required, allowing for the future expansion of its business. Together with its commercial and industrial activities, land is required for outdoor display of tractors and farm machinery; test-driving tractors by prospective purchasers and performance checking and demonstration of farm machinery.¹ JJ Ltd says that it cannot meet its land requirements on vacant land available within the nearby Industrial Zone.² While there appears to be sufficient contiguous industrial zoned land to accommodate the proposed depot, industrial and commercial operations, there is not enough land to also accommodate the tractor test track and cropping land on which to demonstrate farm machinery (e.g. headers and the like).³

¹ Jones, EiC at [20].

² Jones, EiC at [26].

³ We estimate around 63% of the 4-ha is to be set aside for the test track and display areas under the proposal.

[5] JJ Ltd currently employs 20 full-time staff across its various operations. Of the staff employed we understand only two are dedicated to its retail business.⁴ On average the company sells 90 tractors per year.⁵ While sales of tractors and farm machinery are high value, they involve few transactions when compared to the company's other business streams.⁶

[6] Presently, one of JJ Ltd sites is located adjacent to a primary school. We were told the avoidance of conflict between pedestrians and vehicles associated with the school is an important factor motivating the move away.⁷

[7] The Joint Statement of Facts and Issues (the Joint Statement)⁸ provides a good overview of the proposal and a helpful description as set out below:

1. The application site is located at 257 Gordon Road, Mosgiel, Dunedin, contained within Record of Title OT267/214).
2. The proposal involves a joint subdivision and land-use consent (SUB02018-139 and LUC-2018-711).
3. The subdivision involves subdividing the 40ha subject site into two lots. Lot 1 will have an area of 4ha, while Lot 2 will have an area of 36ha.
4. The land-use consent involves relocating an existing business, known as JJs Limited, onto proposed Lot 1. JJs Ltd is a multi-faceted business which involves importation of farm machinery, assembly, testing, demonstration, service and retail sale of the farm machinery.
5. The business will employ 16-18 staff, and will operate 7am to 6pm, Monday to Friday, and 8am to 12pm on Saturdays. A 24 hour/7 day a week service and repair operation is also part of the business, which is predominantly carried out on farm.
6. The proposal will involve construction of a workshop building with a footprint of up to 2,300 square metres, with an office and retail showroom at the eastern end of the workshop.
7. The proposal involves outdoor display areas, signage, on-site parking for both staff and customers, devanning area for containers, loading areas, a gravel storage area and a wash bay. A large test track will also be located to the rear of the workshop building, with a grassed demonstration area in the centre of the test track. The centre of the test track will be used to demonstrate farm machinery, including mowers, rakes, balers and wrappers. Landscaping and mounding are also proposed.
8. There is an existing dwelling on Lot 1 which will be retained. Proposed Lot 2 has an

⁴ Jones, EiC at [36].

⁵ Transcript (Jones) at 28.

⁶ Jones, EiC at [36].

⁷ Jones, EiC at [37].

⁸ Dated 22 October 2019.

existing resource consent for a dwelling.

9. There is no land use proposal for lot 2.
10. The applicant's business currently operates across three separate sites adjacent to Gladstone Road South and the East Taieri Primary School. The applicant's existing operations are on sites zoned Industrial and uses a temporary site zoned Rural and subject to Designation D419 in the 2GP. The existing site configuration requires the applicant to use the public road network for the delivery, testing, and demonstration of agricultural machinery. The applicant seeks a site in the Rural Zone on which all of its operations can be co-located in a way that does not require the use of public roads.

[8] The Joint Statement also provides an accurate description of the surrounding environment, as follows:

1. The subject site is a 40ha, flat rural property. This site is primarily in pasture and is used to produce winter feed for farmers in the area. The site has frontage to both Gordon Road and Dukes Road South. The southern boundary of the subject site adjoins the Silverstream flood bank directly north of Mosgiel.
2. There is an existing dwelling located on the north-eastern side of the property, with associated sheds and parking area located in close proximity. Hedgerows and amenity planting largely surround this dwelling. The dwelling has vehicle access from Gordon Road. A consented second dwelling site is located approximately 225m to the west of the existing dwelling and will be accessed from Dukes Road. The proposed dwelling on lot 2 forms part of the *Hawthorn* environment. A dairy shed is located to the western side of the property.
3. With the exception of shelter vegetation around the dwelling on the eastern boundary, the site has a largely open spatial character.
4. The surrounding environment on the north, east and west boundaries is zoned Rural, with a mixture of farm properties, and smaller rural lifestyle properties. To the north of the site, across Dukes Road South, is a veterinary clinic and associated dwelling. Beyond this to the north is a range of rural and rural residential properties, as well as a motel at 352 Gordon Road. Diagonally across the 'five roads' intersection to the north is the local A&P showgrounds.
5. To the east of the site across Gordon Road are several rural properties, with a substation located at 230 Gordon Road, opposite the southern end of the site. To the west of the site are several rural-residential properties, and a larger block of farm land. Further to the west is a golf course and a small cluster of rural-residential properties.
6. Overall, the character of the area is comprised of a mixture of rural and rural residential properties, with some non-rural activities in the wider area. Shelterbelts or hedgerows line several surrounding properties and paddocks.

[9] From the Joint Statement, we noted the description of various other features of the environment including the local road network and on-site hazards. The application

also records that the site contains high-class soils and that it is currently being used for the production of grass for winter feed (hay and silage). These soils have been identified in the District Plan as LUC Class 2 which is more abundant than LUC Class 1 soil, with LUC Class 2 soil being reasonably common on the Taieri Plain.

Activity status

[10] The site has a rural zoning under the operative and proposed District Plans.⁹ Multiple land uses are proposed for the site and overall the proposal is a non-complying activity under the operative and proposed District Plans.¹⁰

[11] Consent is sought for the use of land and buildings to undertake the repairs and maintenance of tractors and farm machinery. JJ Ltd submits this activity comes under the proposed District Plan's definition of "rural contractor and transport depot". The City Council disagrees and says this activity together with fabricating and assembly of imported farm machinery, is a non-complying industrial activity when carried out on-site. Only where JJ Ltd uses land and buildings as a depot to carry out these services elsewhere, is the activity classified by the plan as being discretionary.

[12] JJ Ltd would also sell tractors and farm machinery at the site. Both parties agree this is "yard-based retail" and as such it is a non-complying activity.

[13] The proposed subdivision is also a non-complying activity under both plans.¹¹

[14] Of the many activities proposed for the site, only the off-road test driving of tractors and testing/demonstration of farm machinery are permitted under the District Plans.

[15] Excluding the use of the existing dwelling for residential purposes, all of the proposed activities are also permitted in the nearby Dukes Road North Mapped Area

⁹ More particularly, the site is zoned 'rural' under the operative District Plan and 'Rural Taieri Plains' under the proposed District Plan.

¹⁰ Joint Statement of Facts and Issues dated 22 October 2019 at [22]-[25]. Different terms may apply when describing the same activity under the proposed and operative District Plans. Save in relation to "rural contractor and transport depot", there was agreement that the proposed land use activities are non-complying under Rules 6.5.7(i) and 6.5.7(ii) of the Operative District Plan and Rules 16.3.3.42, 16.3.3.46 and 16.5.2 of the Proposed 2GP.

¹¹ See Rules 18.5.2 and 16.7.4.3 of the operative and proposed District Plans respectively.

Industrial Zone.¹²

The law

[16] As the proposal is a non-complying activity overall, s 104D of the Act applies. This section provides that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either:

- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies)¹³ will be minor; or
- (b) the application is for an activity that will not be contrary to the objectives and policies of the relevant plan(s).

[17] The parties and their witnesses agree the effects of the activity will be minor and, the first threshold test having been met, the proposal may be considered under s 104 of the Act.¹⁴ As we accept their assessment of the environmental effects, pursuant to s 104 we will consider the application for resource consent having particular regard to:

- (a) the operative and proposed Otago Regional Policy Statements;
- (b) the operative and proposed Dunedin City District Plans; and
- (c) any other matter relevant and reasonably necessary to determine the application.

Permitted baseline¹⁵

[18] The permitted baseline was not applied by the Hearing Commissioners in the first instance decision. The application of the baseline was not addressed in evidence, which we assume was because the scale and significance of effects are not in contention. As we agree with the assessment of effects, we have not had regard to the same.

The City Council's decision

[19] Also required under s 290A is that there is consideration given to the decision on appeal. We agree with the outcome of the decision and do not discuss it at any length.

¹² Spalding, EiC at [38].

¹³ Persons who have given their approval are R C Ireland, C S Ireland, D and C Robertson and E Dowden.

¹⁴ Spalding, EiC at [9]; Cubitt, EiC at [7].

¹⁵ See s 104(2) RMA.

Weighting of the two plans

[20] Counsel agree that the provisions of the operative and proposed District Plan are largely consistent, and for its part JJ Ltd says the outcome of the case does not turn on the weight of the provisions of the respective plans.¹⁶ The City Council appropriately asks that the court be mindful of directive provisions in the proposed District Plan, particularly where those are not under appeal and can be deemed operative.¹⁷

Key issues

[21] Having regard to submissions of counsel, the following issues arise for determination:

Issue 1: Do positive effects of the activity arise by consolidating the activity off public roads that support the proposed activity locating in the Rural Zone?

Issue 2:¹⁸ Do road safety risks arising from JJ Ltd's current use of public roads support the proposed activity locating in the Rural Zone?

Issue 3: How far does the exemption in proposed District Plan Policy 16.2.1.8 extend?

Issue 4: Does "Rural Contractor and Transport Depot", correctly interpreted, include the use of land and buildings for on-site repairs and maintenance?

Issue 5: Whether the proposal (which has a non-complying activity status) is consistent with, or contrary to, the relevant Objectives and Policies with operative and proposed District Plan?

[22] JJ Ltd no longer relies on an argument that the application for resource consent is a "true exception" to argue that its grant will not set an undesirable precedent so we

¹⁶ Appellant, legal submissions at [21]-[22].

¹⁷ Respondent, legal submissions at [39]-[41].

¹⁸ The issue identified by Mr Page in relation to the second issue was too narrow and we have reframed the issue. Mr Page's version read "**Issue 2:** Do road safety risks arising from the testing of machinery on public roads that support the proposed activity locating in the Rural Zone?"

have removed that issue from Mr Page's list.¹⁹ While counsel for the City Council made comprehensive submissions on the true exception test, this no longer is a matter we need to decide. In its place interpretation issues emerged, which we have noted up as Issues 3 and 4.

Issues 1 and 2

[23] It is convenient to deal with Issues 1 and 2 together:

Issue 1: Do positive effects of the activity arise by consolidating the activity off public roads that support the proposed activity locating in the Rural Zone?

Issue 2: Do road safety risks arising from JJ Ltd's current use of public roads support the proposed activity locating in the Rural Zone?

[24] Expert evidence on traffic related issues was provided by Mr G C Fisher for JJ Ltd and Mr L P Copland for the City Council.

[25] In addition to the facts set out in the Joint Statement, Mr Fisher provided the following overview of JJ's existing operations in the context of traffic issues and the surrounding road network, the key points of evidence are summarised next:²⁰

- JJ Ltd's three sites are located on Gladstone Road, McGlashan Street (which runs off Gladstone Road) and Gow Street (which in turn runs off McGlashan Street);
- Gladstone Road is a 50 km/hr two-lane two-way sealed arterial road with broken yellow no parking lines, cycle lanes and footpaths on each side;
- as well as traffic generated by JJ Ltd, a range of other businesses in the area also generate industrial and commercial traffic;
- the East Taieri Primary School is located on the corner of Gladstone Road and Cemetery Road immediately west of JJ Ltd's McGlashan Street site;
- there is a consented but yet to be constructed aged care facility located at the south western end of Cemetery Road, with this development expected to generate a significant volume of traffic;

¹⁹ Transcript (Page) at pp 5, 9 and elsewhere.

²⁰ Fisher, EIC at [11]-[39].

- the testing of new and in-service agricultural vehicles on the public road network can involve up to 50 tractor movements per week, up to 10 per day or at peak times up to 20 per day;
- drawing on information included in the New Zealand Transport Agency *Agricultural vehicles guide (2017)* (NZTA Guide), which provides guidance on the safe and legal use of agricultural vehicles on New Zealand roads, safety risks associated with agricultural vehicles being tested on the road network include these vehicles not being seen, moving at slower speeds than other road users, colliding with other vehicles while turning and for other vehicles to be impacted by fittings projecting out from the agricultural vehicles;
- for each of these risks, the NZTA Guide lists a series of measures for reducing the levels of the safety risks involved;
- the number of crashes across New Zealand involving agricultural vehicles is relatively constant (about 20 per year) with a proportion of these involving fatalities and serious injury;
- with JJ Ltd's operations starting at 7.00am, there is the potential for vehicles accessing and exiting JJ Ltd's sites to impact with other road users during the morning peak commute times including school drop offs;
- as there are insufficient on-site parking spaces on JJ Ltd's main site in McGlashan Street and staff and visitors are required to park on the roadside, there is the potential for road safety to be compromised by drivers seeking out parking spaces;
- JJ Ltd's proposed Dukes Road South site would allow for all testing to be undertaken off road, provide sufficient parking spaces on-site for all staff and visitors and provide a much safer vehicle accessway than at the current site(s).

[26] Overall, when compared with JJ Ltd's existing operations, Mr Fisher's evidence was that road safety would be enhanced if the operations were to be relocated to the proposed new site.

[27] While Mr Copland for the City Council agreed that reducing the use of public roads by agricultural vehicles would be likely to have positive road safety outcomes, his review of the network crash analysis for the local road network did not identify any trends nor existing road safety issues with agricultural vehicles using roads in the wider Mosgiel

area.²¹ He added also that his review of the City Council records had failed to identify any complaints or concerns having been lodged with the City Council's transport department about JJ Ltd's existing site operations.²²

[28] As an alternative to collocating all activities on the proposed rural site, the traffic and planning witnesses considered the use of vacant land in the Dukes Road North Industrial Zone for its commercial, industrial and depot activities while continuing to road test vehicles, noting that:

- this location is contiguous with land used for rural activities and these activities are already likely to generate movements of agricultural vehicles²³ on the road network in that area under normal farming operations;
- the Industrial Zone has an 80 km/h speed restriction compared with a 50 km/h restriction at Gladstone Road;
- the Industrial Zone is a straight, flat road with good sight visibility for overtaking;
- the difference in speed between agricultural vehicles and other vehicles using the two roads would not result in any marked difference in road safety between the two locations.

Discussion and findings

[29] Section 1 of the NZTA Guide lists the vehicles it covers, including agricultural tractors (including implements which are transported on tractors such as front-end loaders and mowers mounted on a three-point linkage), agricultural trailers and self-drive agricultural machines. This list would appear to be consistent with most, if not all, of the vehicles covered by JJ Ltd's business.

[30] As intimated under Issue 2, JJ Ltd currently use public roads for a range of activities including the post-assembly and post-maintenance testing of agricultural vehicles, the transport of over-weight and/or over-width agricultural vehicles for field-testing and for the road testing and demonstration of agricultural vehicles by prospective purchasers.²⁴ Off-road testing is also required for some farm machinery.

²¹ Copland, EIC at [7]-[8].

²² Copland, EIC at [9].

²³ Jones, EIC at [5] we understand he demonstrates and tests tractors and trailers on public roads.

²⁴ Jones, EIC at [5].

[31] There can be no disagreement that in absolute terms it would be safer if each of these activities was undertaken off-road and carried out on the test track and associated cropping land at the proposed site.

[32] Given the presence of the East Taieri School, we conclude also that it would be safer to carry out these activities from the proposed Gordon Road site or from Dukes Road North Industrial Zone²⁵ as opposed to Gladstone Road.

[33] We note that the NZTA Guide does not identify nor distinguish between the different reasons for agricultural vehicles using the road network such as for normal farming operations, or in the case of JJ Ltd's business, for the different types of activity listed above.

[34] NZTA's published guide is clear evidence that agricultural vehicles are an accepted class of vehicle which road users can be expected to encounter on New Zealand roads. We expect that, as the NZTA Guide says, the movement of agricultural vehicles can increase risk on New Zealand's road network.²⁶

[35] We find Mr Copland's evidence compelling that, despite the New Zealand-wide statistics, from his research he did not identify any trends or existing road safety issues with agricultural vehicles using roads in the wider Mosgiel area and that the City Council had not recorded any complaints or concerns about JJ Ltd's existing operations.

[36] Coming back to the two issues, while a reduction of collision risk from agricultural vehicles using the roads located near a school is a positive effect of consolidating activities off-road at the proposed site, the evidence does not demonstrate the degree or significance of the current risk. Consequently, this is not a matter to which we give great weight. This improvement in road safety is, however, relevant and is a matter which we will take into consideration when reaching our decision.

[37] As a concluding comment on road safety issues, we were somewhat surprised that we were not made aware of whether JJ Ltd had any operating procedures restricting road testing during school drop-off and pick-up times. We have found such restrictions

²⁵ If JJ Ltd was to relocate to land that is zoned for the proposed commercial and industrial activities.

²⁶ NZTA Guide at Section 9.

on heavy vehicle movements to be standard practice where school children are required to cross the frontages of construction sites on their way to and from school. If not already in place, we would encourage JJ Ltd to develop and implement such procedures.

Issue 3: How far does the exemption in proposed District Plan Policy 16.2.1.8 extend?

[38] The appellant submits that the non-complying activities are anticipated in the rural zone where they have a functional need to locate in the zone and secondly, are for the well-being of rural communities.²⁷ As this argument turns on the interpretation of the proposed District Plan, we set out next the principles established by case law.

Interpretation principles

[39] We proceed on the summary of the principles set out in *Auckland Council v Budden*.²⁸ These have been recently approved by the High Court in *Simons Pass Station Ltd v Mackenzie District Council*²⁹ as an accurate and succinct statement of the relevant principles applying to the interpretation of subordinate legislation:³⁰

[36] The principles for the interpretation of a subordinate RMA planning instrument are also well settled and not contentious. We are guided by the Interpretation Act 1999 ('IA'), particularly s 5 on purposive interpretation. The principles are also as set out in the leading Court of Appeal authorities of *Ratray* (decided pre-RMA) and the more recent decision in *Powell* (where *Ratray* was applied and interpreted in relation to an RMA district plan matter). In particular, we apply the approach described in the following passage in *Powell*:

[35] ... While we accept it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum. As this Court made clear in *Ratray*, regard must be had to the immediate context ... and, where any obscurity or ambiguity arises, it may be necessary to refer to the other sections of the plan and the objectives and policies of the plan itself. Interpreting a rule by rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with a judgement of this Court in *Ratray* or with the requirements of the Interpretation Act.

[37] We add that, for subordinate legislation, where examination of the immediate context of the plan leaves some uncertainty, it is also permissible to consider provisions in light of

²⁷ Transcript (Page) at pp 2, 9, 11, 165-179.

²⁸ [2017] NZEnvC 209.

²⁹ *Simons Pass Station Ltd v Mackenzie District Council & anor* [2020] NZHC 3265 at [25]-[27].

³⁰ *Auckland Council v Budden* [2017] NZEnvC 209.

the purpose they fulfil in the authorising legislation (in this case, the RMA). Similarly, the fact that a district plan is to give effect to a RPS can make the latter of some relevance to the interpretation of the former.

[footnotes omitted]

[40] A contextual and purposive approach to interpretation also requires consideration of those matters identified in *North Canterbury Clay Target Association v Waimakariri District Council*, namely:³¹

- the text of the relevant provision in its immediate context;
- the purpose of the provision;
- the context and scheme of the plan and any other indications in it;
- the history of the plan;
- the purpose and scheme of the Act;
- any other permissible guides to meaning.

[41] The High Court in *Simons Pass Station Ltd* noted the relevance of above factors is underscored by the observations of the Supreme Court in *Commerce Commission v Fonterra Co-operative Group Ltd* where it was stated that:³²

It is necessary to bear in mind that s 5 of the Interpretation Act 1999 makes text and purpose the key drivers of statutory interpretation. The meaning of an enactment must be ascertained from its text and in the light of its purpose. Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross-checked against purpose in order to observe the dual requirements of s 5. In determining purpose the court must obviously have regard to both the immediate and the general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

[42] Importantly, it is the court's task to interpret the text of the legislation and not to rewrite it; the court is not to give the text meaning that it is incapable of bearing.³³

Relevant proposed District Plan provisions

[43] For context, the key provisions of the proposed District Plan in contention are set

³¹ *North Canterbury Clay Target Association v Waimakariri District Council* [2014] NZHC 3021, (2014) 18 ELRNZ 133 at [18].

³² *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36; [2007] 3 NZLR 767 at [22].

³³ *Northland Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 350 (CA).

out next.

[44] Objective 16.2.1 of the proposed District Plan provides:

Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.

[Underlining indicates use of a hyperlink to a defined term in the District Plan].

[45] As anticipated by that objective, farming and conservation type activities are enabled in the rural zones (Policy 16.2.1.1), together with a range of named activities (Policy 16.2.1.2) and yet other activities in limited circumstances (e.g. Policies 16.2.1.3, 16.1.2.4, 16.1.2.5). Rural contractor and transport depots are one activity that is specifically provided for (Policy 16.2.1.2).

[46] The objective is also implemented by a policy which is to avoid commercial and industrial activities in the rural zones “unless otherwise provided for” (Policy 16.2.1.8). We set out the text in full as it is important to understand counsel’s argument. The policy reads:

Policy 16.2.1.8

Avoid supported living facilities, commercial activities, industrial activities, and major facility activities, unless otherwise provided for, in the rural zones.

[Underlining indicates use of a hyperlink to a defined term in the District Plan].

Interpretation of Policy 16.2.1.8

[47] We agree with JJ Ltd that in Policy 16.2.1.8 the meaning of “avoid” is to not allow or to prevent the occurrence of commercial and industrial activities. However, there is an exception to the policy in that commercial and industrial activities are to be avoided “unless otherwise provided for”.

[48] Counsel for JJ Ltd, Mr Page, makes two submissions. Firstly, the meaning of “unless otherwise provided for” may be determined by reference to the rules in the plan. Specifically, the rules either:

- (a) permit commercial or industrial activities in zone; or
- (b) are for activities that are contemplated by the objectives and policies, albeit the activity, must be authorised by a resource consent.

[49] Mr Page prefers the latter interpretation³⁴ and says the granting of resource consent is a method by which this plan “otherwise provides for” commercial and industrial activities. We do not accept his submission as that would be to equate the purpose of the policy with the outcome on an application for a resource consent.

[50] Secondly, Mr Page submits commercial and industrial activities with a functional need to locate in the rural zone come under the exception to the policy “unless otherwise provided for”. He argued that this interpretation would implement Objective 16.2.1 “which seeks to support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment”.³⁵

[51] The submission was developed in closing with reference to the proposed Regional Policy Statement (RPS) and the strategic directions of the proposed District Plan. Commencing with the RPS, the outcome for the rural areas is that sufficient land is managed and protected for economic production (proposed RPS Objective 5.3). This is achieved by “managing activities in rural areas, to support the region’s economy and communities by, [amongst other matters], providing for other activities that have a functional need to locate in rural areas” (proposed RPS Policy 5.3.1(f)).

[52] Mr Page submits the proposed District Plan’s strategic directions give effect to the RPS through Policy 2.3.1.2. He says this policy “contemplates that there will be activities provided for that support the rural economy and need a rural location or support rural activities”.³⁶ However, while the proposed plan’s lower order objective and policies address some activities in the rural areas, the policies do not provide for all activities that have a functional need to locate there.³⁷

³⁴ Appellant, legal submissions at [37]-[40].

³⁵ Appellant, legal submissions at [41].

³⁶ Transcript (Page) at 166-168, 172-174 and elsewhere. Also described as a functional “connection” with the rural zone.

³⁷ Transcript (Page) 167-168.

[53] With reference to the RPS Policy 5.3.1(f) and proposed District Plan Policy 2.3.1.2, we understand the basic proposition to be that the phrase “unless otherwise provided for” in Policy 16.2.1.8 means “unless there is a functional need to locate” in the rural area. Applying his interpretation to the objective and policies, Mr Page submits key aspects of the proposal have a functional need to locate within the rural zone and as such are neither contrary nor inconsistent with the District Plans.³⁸

Discussion

[54] The leaping-off point for JJ Ltd’s interpretational argument is the RPS³⁹ rather than the text of the relevant provision (i.e. Policy 16.2.1.8) in its immediate context. We prefer to follow the order of the plan interpretation principles set out above.

The text of the relevant provision in its immediate context

[55] The phrase “unless otherwise provided for” creates an exception to Policy 16.2.1.8 that is to avoid commercial and industrial activities in rural areas. The interpretational issue is how *far* does this exception extend?

The purpose of the provision

[56] Policies 16.2.1.1-16.2.1.12 provide for or anticipate in limited circumstances, activities in rural areas, including specified commercial and industrial activities. Collectively these policies implement Objective 16.2.1 which is to reserve the rural zones for:

- (a) productive rural activities;
- (b) protection and enhancement of the natural environment, and
- (c) certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than urban environment.

[57] Three observations can be made about Objective 16.2.1 and in particular the activities that support community well-being. First, the objective pertains not to *all* but

³⁸ Transcript (Page) at 5.

³⁹ Transcript (Page) 166.

only “certain” activities that support community well-being and secondly, these community well-being activities are ones that are “most” appropriately located in a rural rather than urban environment”. Finally, the activities that are provided or enabled under the relevant policies are not alike and arguably each support different aspects of the community’s social, cultural and economic well-being.

[58] JJ Ltd did not define what it meant by “functional need” nor address the inter-linked requirement for activities that support the well-being of communities to also be ones that are “most appropriately located in a rural area”. We garnered from the planning evidence called in support of JJ Ltd’s appeal that an activity that has a functional need to locate in the rural area is one that supports rural activities. The boundaries of “functional need” and “support” are indistinct terms and we think simply assumed from the standpoint of JJ Ltd’s enterprise and, perhaps also the accessibility and convenience of its customers who are located around the Otago region.

[59] As an aside, while not referred to by JJ Ltd, we did have regard to the National Planning Standard’s definition of “functional need” to see if this lent support for its interpretation. The Standard defines “functional need” as meaning “the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment”. The application of the Standard’s definition to the facts does not support a grant of consent.⁴⁰

The context and scheme of the plan and any other indications in it

[60] Under the Proposed District Plan’s strategic directions, Policy 2.3.1.2 addresses the management approach of the proposed plan, which is in this instance to use zoning and other methods (specifically rules) to maintain or enhance the productivity of farming and other activities that support the rural economy. Policy 2.3.1.2 implements a strategic objective to promote economic productivity on the one hand and social well-being outcomes on the other (Objective 2.3.1). Referred to by JJ Ltd’s planning witness,⁴¹ the policy is incapable of being applied directly to the application for resource consent and does not assist with the appellant’s interpretation of the proposed plan. The policy is simply to have rules providing for rural industry and other activities that support the rural

⁴⁰ That is so inasmuch as there is no evidence upon which we could conclude that the range of proposed activities can only occur in a rural environment.

⁴¹ It was also referred to by counsel. See Transcript (Page) at 167.

economy and secondly, rules restricting commercial activities to those that need a rural location or support rural activities.⁴² We would expect support for those rules in the substantive objective and policies.

Outcome

[61] Having regard to the purpose of Policy 16.2.1.8, in its immediate context we would interpret “unless otherwise provided for” as meaning *unless otherwise provided for in the objective and policies*. By way of example, on the court’s interpretation, rural industry – which is a sub-activity of industry – will not be avoided under Policy 16.2.1.8 because it is “otherwise provided for” under Policy 16.2.1.2.

[62] It is reasonably clear that the proposed plan has adopted a top-down approach that with increasing particularity develops the objectives and policies for the rural areas. We cannot comment on why certain activities are included in the policies and others not, but the text of the objective makes clear this is intentional.

[63] On the evidence before us, we can find no inconsistency between the RPS and proposed District Plan.

[64] Given the above, we do not accept JJ Ltd’s interpretation as it widens the exception in Policy 16.2.1.8 beyond those activities otherwise provided for in the objective and policies to introduce a new category of activity.

Issue 4: Does “Rural Contractor and Transport Depot”, correctly interpreted, include the use of land and buildings for on-site repairs and maintenance?

Introduction

[65] The final legal issue concerned the interpretation of a defined term in the proposed District Plan “Rural Contractor and Transport Depots”.

[66] Given that the proposal overall falls to be assessed as a non-complying activity, the salience of this issue to the disposition of the appeal was unclear. It may have had to do with Mr Cubitt’s thesis that the proposal supports the well-being of rural

⁴² Policy 2.3.1.2 (b) and (h).

communities insofar as it is offering a range of services to the farming sector. We understand Mr Page to say that there are no effects nor policy arguments against the collocation of commercial and industrial activities with a rural contractor and transport depot, where these activities are “connected” with the depot.⁴³ The company’s businesses are connected insofar as they share staff, facilities and customers.⁴⁴

Discussion

[67] Rule 16.3.3.44 provides rural contractor and transport depots are discretionary activities within the rural zones. The rule is not subject to any appeal on the proposed plan.

[68] JJ Ltd proposes to offer tractor and farm machinery maintenance and repair services on-site, and at their clients’ properties. Mr Cubitt considers this service a discretionary activity, whereas the City Council says the use of the land and buildings is discretionary only where maintenance and repair services take place off-site. The on-site repairs and maintenance of tractors and farm machinery are non-complying industrial activities. We agree with the City Council.

[69] “Industrial activities” is a defined term in the proposed District Plan and consist of “industry” including “rural industry and rural contractor and transport depot”. Industry is also defined and includes both the on-site and off-site services proposed by JJ Ltd.

[70] Relevantly, “industry” is defined as:

The use of land and buildings for any of the following:

- manufacturing, assembly, processing, storage, repair, maintenance, and packing of goods and materials, including machinery or vehicles; and
- a depot for the storage and dispatch of vehicles, equipment, and/or materials, and the administration and dispatch of workers using these in the field.

[71] “Rural Contractor and Transport Depots” are an industrial sub-activity, and are defined as follows:

⁴³ Transcript (Page) at 174.

⁴⁴ Transcript (Page) at 175.

Rural Contractor and Transport Depots

The use of land and buildings as a depot for rural contractor and transport services.

Examples of rural contractor and transport services are:

- fencing;
- crop harvesting;
- rural drainage; and
- stock transport services.

For the sake of clarity, this includes the storage, maintenance, repair and refuelling of the vehicles, machinery and other materials associated with these activities as well as the administration and dispatch of workers.

This definition excludes any retailing of farm equipment or other heavy machinery, which is defined as yard based retail.

Rural contractor and transport depots are managed at two different scales - small scale and large scale.

Rural contractor and transport depots are a sub-activity of industry.

[underlining indicates use of a hyperlink to a defined term in the District Plan].

[72] We do not accept JJ Ltd's submission to the effect that the activities listed in the second paragraph⁴⁵ of the Rural Contractor and Transport Depots definition are services that may be offered at a depot. JJ Ltd interprets the rule by adding punctuation⁴⁶ and ignoring the term 'depot'.⁴⁷

[73] The term 'depot' is important and is defined in the Oxford Online Dictionary as meaning "a place where goods are deposited or stored" and likewise the Cambridge Online Dictionary as "a building where supplies or vehicles, especially buses, are kept".⁴⁸ The operative part of the definition is the use of land and buildings as a depot. We interpret "these activities" in the second paragraph as referring to the use of the land and buildings as a depot and secondly, that the list of activities in the same paragraph are activities that are ancillary⁴⁹ to the use of land and buildings as a depot. Put colloquially, this sub-activity is a carve out from the definition of "industrial activities", including repair and maintenance of machinery and vehicles, which would otherwise apply.

⁴⁵ That is the paragraph commencing "For the sake of clarity..." and more particularly, storage, maintenance, repair and refuelling of the vehicles and machinery.

⁴⁶ Transcript (Page) at 170-171.

⁴⁷ Transcript (Page) at 169.

⁴⁸ See also Exhibit Common Bundle, Document 4.

⁴⁹ Here we are ascribing the ordinary meaning to the term "ancillary".

Outcome

[74] The undertaking of repairs and maintenance of farm machinery and vehicles at the proposed site does not come within the definition of “Rural Contractor and Transport Depots”. It follows that Rule 16.3.3.44 does not apply; this activity is a non-complying activity under Rule 16.3.3.46.⁵⁰

[75] We turn next to the relevant provisions of the proposed District Plan.

Issue 5: Whether the proposal (which has a non-complying activity status) is consistent with, or contrary to, the relevant Objectives and Policies with operative and proposed District Plan?

Proposed District Plan

Introduction

[76] This appeal concerns an application for resource consent for multiple land use activities with different activity classifications. In the ordinary course a consent authority, and this court on appeal, will determine whether it is appropriate to grant or refuse the application; not necessarily whether it is appropriate to allow any one of the individual activities to occur.⁵¹ Ultimately the court is charged with making a judgment⁵² on the merits of the proposal considered in light of the relevant provisions in the planning instruments.

[77] Before considering the provisions of the proposed District Plan, we note that JJ Ltd’s planning witness, Mr Cubitt, does not address in evidence many of the provisions assessed by the City Council’s planner, Ms Spalding. We presume his focus is on those provisions in respect of which there is a difference of opinion as between the planning witnesses, the resolution of which is material to the outcome of the appeal. While we have considered all the evidence, we will take his lead when discussing the provisions of the plan.

⁵⁰ This rule provides that “all other activities in the industrial activities category” are non-complying.

⁵¹ *Marlborough District Council v Zindia Ltd* [2019] NZHC 2765 at [47].

⁵² In accordance with ss 104, 104B and s 104D RMA.

Proposed District Plan Provisions

[78] The proposed District Plan identifies two key issues facing the rural environment. They are:

- the fragmentation of rural landholdings from subdivision, which can lead to rural properties too small to be used for productive purposes; and
- non-productive land uses or those activities that would ordinarily be expected to locate in the urban parts of Dunedin seeking to locate in rural areas.

[79] Objective 16.2.1 and its implementing policies are important and noted above. While certain activities can take place in the rural area (Objective 16.2.1), the productivity of rural activities in the rural zones is also to be maintained or enhanced (Objective 16.2.4). Objective 16.2.4 is implemented by policies that only allow land use and subdivision activities to occur where any loss of current or potential future rural productivity would be insignificant in an area of high-class soils (Policies 16.2.4.2(a)(i) and 16.2.4.3(b)). Correlated with these policies is the zone's minimum 40-ha site size. Finally, Policy 16.2.4.1 also applies as it is proposed to remove and store in bunds the topsoil from the footprint of the building, test track, gravel storage area and parking area and the external sealed areas. Policy 16.2.4.1 requires earthworks in an area of high-class soils to be retained on site.

[80] We note, Policies 16.2.4.2 and 16.2.4.3⁵³ are under appeal, but that Objective 16.2.4 and Policy 16.2.4.1 are not.

[81] Finally, while certain activities can take place in the rural area, rural character values and the amenity of the zone are to be maintained or enhanced (Objective 16.2.3). The effects of the proposal on rural character and amenity are agreed to be not in issue and we proceed on the basis that the proposal is consistent with the relevant objective.

⁵³ Transcript recorded these as 16.24.1, 16.24.2 and 16.24.3.

Discussion and findings*Commercial and industrial activities sub-topic*

[82] We recap the key findings above. Firstly, JJ Ltd has not succeeded in its interpretation of the phrase “otherwise provided for” in Policy 16.2.1.8 means “unless there is a functional need to locate” in the rural area. Secondly, it is not in dispute that part of the proposal is for the use of land and buildings as rural contractor and transport depot – at least when repair and maintenance business is carried on off-site. This activity is one that is to be provided for in the rural zone (Policy 16.2.1.2). However, the use of land and buildings for the repair and maintenance of customer vehicles and machinery is an industrial activity in relation to which the policy is to avoid.

[83] Further, save in relation to the growing of hay and crops to demonstrate farm machinery (e.g. headers and tedders), the proposed land uses are not productive rural activities. As Mr Cubitt rightly acknowledges, these productive uses⁵⁴ are ancillary to the carrying out of commercial and industrial activities.⁵⁵

[84] Finally, we have had regard to the appellant’s submission that if the rural contractor and transport depot is provided for under the policies then any commercial and industrial activities “connected with” the depot are also “appropriate” if they have no additional effects and provided the commercial and industrial activities have a functional need to locate to that zone.⁵⁶ As we noted earlier, the various enterprises are connected insofar as they share staff, facilities and customers.

[85] On the one hand, there is benefit to JJ Ltd collocating all of its activities on a single site. On the other hand, it appears to us that the spatial requirement for cropping land and the test track is driving the decision to locate out-of-zone activities in the rural area because there is insufficient land in the Dukes Road North industrial zone to collocate these activities together with JJ Ltd’s commercial and industrial activities. The evidence does not demonstrate that the commercial and industrial activities are “most” appropriately located in a rural zone (Objective 16.2.1), indeed the fact that the activities are permitted in the neighbouring Industrial Zone and that a competitor has recently

⁵⁴ That is, hay and crops.

⁵⁵ Transcript (Cubitt) at 53-54.

⁵⁶ Transcript (Page) at 174.

relocated to that zone negates this.

Subdivision and high-class soils sub-topic

[86] Assessed as a percentage of the total area of high-class soils in the District, the proposal is to “remove”⁵⁷ less than 0.0004% of the District’s high-class soils. By this metric, Ms Spalding’s evidence was that the loss of current or potential future rural productivity would be insignificant. Mr Cubitt does not assess the percentage of high-class soils to be occupied by the non-productive uses, but in common with Ms Spalding he claims the removal of the high-class soils will not have any effect on the productivity of the wider rural zone.

[87] We were not adequately assisted by the planning evidence in our understanding of how the objective and policies are to be applied when considering the significance of any loss of current or potential future rural productivity. In saying that, we bear in mind that Policies 16.2.4.2 and 16.2.4.3 are under appeal and their wording is complex. Further we accept that a measure of soils lost as a percentage of the total high-class soils in the District is a relevant metric. However, by itself the metric does not fully inform the judgement required under the policies about the *significance* of any loss of current or potential future rural productivity. The metric is a measure of the spatial extent of soils to be occupied, and as such, this is simply one measure of incremental loss, but not – as far as we can tell – the cumulative loss of high-class soils. Without explaining their rationale, the planning witnesses simply equate this metric with productivity. While soil classification and productivity are strongly correlated, the focus of the policies is on the significance of any change in productivity should the soils be occupied, in this case, by commercial and industrial activities (amongst others).

[88] Mr Cubitt agreed with the court that there are other factors that might be considered under this policy.⁵⁸ For example, a potentially more accurate measure of incremental loss may be to consider:

- (a) the area of high-class soils proposed to be removed as a percentage of the total land containing high-class soils
 - (i) excluding:

⁵⁷ Spalding, EIC at [66].

⁵⁸ Transcript (Cubitt) at 76-79.

1. land zoned for future urban development⁵⁹ under the proposed District Plan; and/or
2. areas of high-class soils that are not contiguous i.e. fragmented, discrete pockets of soils.

Other relevant considerations might include:

- (b) the attributes and versatility of the area's soils for a range of land uses;⁶⁰
- (c) the presence or absence of factors limiting productivity, including other land uses in the area; and
- (d) the commercial viability of rural activities in the area generally.⁶¹

[89] We give little weight to the planners' opinions that the use of high-class soils to construct the landscape bunds achieves Policy 16.2.4.1. Both interpret the policy as requiring the physical retention of soil on the site, although each expressed disquiet around the policy's implementation of the objective.⁶² The question that goes begging is whether Policy 16.2.4.1 concerns the literal retention of soil on-site or alternatively the retention of high-class soils, including the attributes of these soils? We consider that there is a reasonable argument to be made for the latter given that the policy implements an objective that is to maintain or enhance the productivity of rural activities in this zone (Objective 16.2.4).

[90] We acknowledge that the proposed District Plan does not require the outright retention of all high-class soils and that a range of non-farming activities are contemplated. The fact that this proposal includes a depot contemplated by Policy 16.2.1.2 within this rural zone, does not lend support to collocate other activities that the plan would otherwise avoid. Further we agree with the City Council, that were JJ Ltd to cease its activities at the proposed site, it is unlikely that the land would revert to productive use.⁶³

⁵⁹ For example, green field sites yet to be developed.

⁶⁰ Based on historical and present-day rural activities, Mr Cubitt gave evidence that soils in the area were not as versatile as other areas of high-class soils, for example, Outram. However, we regard soils' attributes and versatility is a matter for an agronomist or soils' expert and are unable to give his opinion any weight. See Transcript at 77-78.

⁶¹ See *Self Family Trust v Auckland Council* [2020] NZEnvC 214 at [103]-[109] as to how an approach to commercial viability in the context of a plan change.

⁶² See Spalding EIC at [68]-[70]; Transcript (Cubitt) at 76.

⁶³ Respondent, legal submissions at [48].

[91] Finally, the only other matter of note is the planners' views that the minimum site size is correlated with the retention of high-class soils for productive uses, as non-productive activities would be discouraged from establishing on sites of this size. This is a view we share.⁶⁴

[92] On the evidence before us, we find that the proposal is (at the very least) in tension with Objective 16.2.4 and Policies 16.2.4.1-16.2.1.3.

Operative District Plan

[93] We have considered the status of the proposal under the operative District Plan, noting again the proposal overall falls to be assessed as non-complying under this plan.

[94] As Mr Cubitt correctly observes, the objectives and policies of the operative District Plan are less prescriptive and take on an effects-based approach.⁶⁵ We also agree with him that the relevant provisions address three themes: amenity values, productive capacity and the potential for conflict between different land use activities. However, rather than discussing 'themes', we prefer to commence with the significant resource management issues identified in the operative District Plan about which the objectives and policies respond.

[95] The significant resource management issues for the rural area concern the potential for land fragmentation to adversely affect the sustainable management of natural and physical resources⁶⁶ and the importance of productive capacity of the rural area to Dunedin's economy.⁶⁷ The third issue of relevance in this appeal is the potential for certain activities to adversely affect the character and amenity values of the rural area. The operative District Plan explains that the productive use of land, in one form or another, is a key component in the character of most rural parts of the district. Objective 6.2.1 responds to the first two identified above issues and Objective 6.2.2 to the third.

[96] Considered in the round, the operative District Plan is principally concerned with the use of the land resource in the rural zone. The ability of the land resource to meet the needs of future generations will be maintained (Objective 6.2.1) by providing for

⁶⁴ Transcript (Cubitt) at 79; Transcript (Spalding) at 124.

⁶⁵ Cubitt, EIC at [67].

⁶⁶ Issue 6.1.2.

⁶⁷ Issue 6.1.3.

activities that are based on the productive use of rural land (Policy 6.3.1) and by sustaining the productive capacity of the rural zone through controlling the adverse effects of activities (Policy 6.3.2). The explanation to Policy 6.3.2 notes that in order to minimise the impact on rural productivity, permitted residential activities in the rural zone require allotments to have a minimum area of 15-ha. Land fragmentation and the establishment of non-productive uses of rural land is expressly discouraged (Policy 6.3.3).

[97] Allied with the above is the objective that the amenity values associated with the character of the rural area are maintained and enhanced (Objective 6.2.2). As noted in *Blueskin Energy Ltd v Dunedin City Council*, amenity values are regarded in two ways; firstly, the general amenity associated with the character of the area and secondly, the particular amenity of adjoining properties.⁶⁸

[98] The amenity values associated with the character of the rural area (Objective 6.2.2) will be maintained and enhanced if the character of the rural area is maintained (Policy 6.3.5). The elements that go to make up rural character are described in Policy 6.3.5. This policy has two parts that are to be read and applied together. Thus, rural subdivision and activities are required:

- (a) to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area; and
- (b) to be undertaken in a manner that avoids, remedies or mitigates adverse effects on rural character.

[99] In addition, the effects on adjoining properties are avoided, remedied or mitigated (Policy 6.3.6).

[100] Finally, we were also referred to Objective 6.2.5 and Policy 6.3.12 but consider these to be of limited relevance. In context, these provisions are more concerned with the potential for reverse sensitivity effects than with the alienation of the land resource from future productive activities as applied by Ms Spalding.⁶⁹

⁶⁸ *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 150 at [105].

⁶⁹ Spalding, EIC at [105] and Appendix C.

Discussion and findings

[101] While the objectives and policies refer to “productive use” and “non-productive use” of land, the plan does not define these terms. We interpret the two terms as referring to the use of land for primary production.⁷⁰ This interpretation is available having regard to the purpose of the objective and policies.

[102] While JJ Ltd is carrying on an activity that supports the primary sector, the proposal itself is not a productive use of rural land. The activities comprising the proposal are not provided for in the rural zone, indeed the establishment of non-productive uses of land is discouraged. Subdivision of land to create a new under-sized lot,⁷¹ is also discouraged (Objective 6.2.1 and Policy 6.3.3.). While cropping is a productive use of the land we regard this activity as part of the carrying on of commercial and industry at this site.⁷² The fact that there is any primary production occurring at all on this site we regard as a neutral matter in the overall determination of the appeal including Policies 6.3.1 and 6.3.2.

[103] Both parties accept that the effect on amenity of adjoining properties can be mitigated (Policy 6.3.6). Having received no evidence to the contrary, we proceed on this basis.

[104] However, when considering the wider effect on rural character, JJ Ltd appears to have overlooked the possibility that the relevant policy (Policy 6.3.5) has two parts that are to be read in conjunction. The court was referred to evidence given by landscape witnesses at the City Council hearing but not called on appeal. Mr Cubitt said the landscape witnesses agreed the effect on landscape and rural character will be minor⁷³ and this may have been the view of the Hearing Commissioners,⁷⁴ but Ms Spalding does not agree. Effects aside, she points out that the first part of the policy “requires rural subdivision and activities to be of a nature, scale, intensity and location consistent with

⁷⁰ ‘Primary production’ is defined in the operative District Plan and means the unprocessed product of any form of farming, including forestry, aquaculture, viticulture, horticulture and the collection or harvesting of wildlife.

⁷¹ Lot 1 (4-ha).

⁷² Transcript (Spalding) at 119-121. As noted in the Transcript, ordinarily the court would use the language of “ancillary”, but this term is defined and applied in a different way in the proposed District Plan.

⁷³ Cubitt, EIC at [60].

⁷⁴ Hearing Commissioners’ Decision dated 18 June 2019, under the heading ‘Reasons for this Decision’, paragraph 3 (pages unnumbered and unparagraphed).

maintaining the character of the rural area”.⁷⁵ In this regard the subdivision to create a 4-ha lot is well below the 15-ha minimum lot size in the operative District Plan.⁷⁶

[105] Ms Spalding does not address the second part of the policy pertaining to activities and whether these are of a nature, scale and location consistent with maintaining the rural character. Nor is there discussion of this policy in the decision under appeal.⁷⁷ Assuming this is relevant, aside from the veterinary clinic⁷⁸ located across the road, on our site visit we do not recall observing other commercial or industrial activities taking place within the locality. We did not raise the matter with the planning witnesses and therefore do not make any finding on whether the activities are inconsistent with the directive wording of Policy 6.3.5. However, we accept that the subdivision (at least) is inconsistent with Policy 6.3.5 – which requires certain outcomes and is also inconsistent with the less directive working of Policy 6.3.3 – which is to “discourage” land fragmentation and the non-productive use of land.⁷⁹

Other matters

[106] Save in relation to the interpretation of Policy 16.2.1.8 of the proposed District Plan, we have not had regard to the Regional Policy Statements directly. To the extent that the planning witnesses have directly assessed the application under the Regional Policy Statements’ provisions, we did not find this evidence assisted our consideration of the proposal where it is not being asserted that the District Plans do not give effect to the RPS.

[107] Both parties referred to the recent decision of *Rogers v Christchurch City Council*⁸⁰ and its approach to precedent with consequential outcome for the rural zones are difficult to foresee. As in the *Rogers* case, were we to accept JJ Ltd’s interpretation, and approve of the non-complying commercial and industrial activities, we would not

⁷⁵ Spalding, EIC at [102].

⁷⁶ Spalding, EIC at [102].

⁷⁷ Policy 6.3.5.

⁷⁸ Veterinary clinics are provided for under the proposed District Plan in the rural zones.

⁷⁹ Ms Spalding gave evidence the proposal was contrary to Policy 6.3.3; EIC at [103]. Without giving a citation, Ms Spalding defined ‘discourage’ as meaning to prevent or try to prevent (something) by showing disapproval or creating difficulties. The Oxford Online Dictionary does define ‘discourage’ this way, but it is not the only definition given. ‘Discourage’ also means persuade (someone) against an action and to cause (someone) to lose confidence or enthusiasm. The use of the term ‘avoid’ in the same and other related policies we interpret as meaning ‘not allow’. If correct, this ‘suggests discourage’ does not necessarily mean ‘prevent’. Of course, the plan may not be using terms consistently.

⁸⁰ [2019] NZEnvC 119.

have applied the proposed District Plan's provisions according to their tenor.

[108] JJ Ltd's proposal to grant resource consent subject to a condition where, for the purpose of s 134 of the Act, the consent is said to be personal to the appellant and is not to be attached to the land,⁸¹ does not overcome the City Council's concerns as to precedent set by the court interpreting the plan in this way. Indeed, this condition has a hollow ring to it as there is no associated condition to rehabilitate the land; there is no evidence to demonstrate that high-class soils can be restored. As Messrs Cubitt and Page acknowledged, the cessation of activities is not the only outcome for the land if JJ Ltd ceased operating at the site.⁸²

Conclusion

[109] Ultimately the decision whether to grant or decline this application for resource consent is a discretionary matter, the relevant matters to consider are set out in s 104 of the Act. Proceeding on the basis that the effects on the environment will be minor, we have considered the proposal in relation to the objectives and policies of both District Plans and, to the extent relevant to our determination, the provisions of the proposed Reginal Policy Statement.

[110] There are aspects of JJ Ltd's proposal that would benefit the environment, including an absolute reduction in road safety risks in relation to its existing uses of public roads by its agricultural vehicles (particularly near to the East Taieri School). The collocation of all activities on the one site would also benefit the smooth and efficient operation of the business and no doubt advantage customers. In this regard, it is our impression that an important factor for discounting in-zone industrial land is the spatial requirement for cropping land on which to test and demonstrate farm machinery (which we understand to be a service new to the business) and for the test track.

[111] These above benefits would also be partially realised if JJ Ltd was to collocate onto one site at the neighbouring industrial zone while continuing to use public roads, but not roads in the vicinity of a school, for the purposes of testing, transporting and (where practicable)⁸³ demonstrating agricultural vehicles and farm machinery.

⁸¹ Land Use Consent, proposed Condition 1.

⁸² Transcript (Page) at 14; Transcript (Cubitt) at 47 and elsewhere.

⁸³ We proceed on the basis that some components of the assembled farm machinery must be tested off-road (currently at a site near Momona).

[112] Taking into account the benefits, while not to understate their importance to JJ Ltd, they are insufficient to overcome the strongly worded direction in Policy 16.2.1.8 of the proposed District Plan to avoid commercial and industrial activities locating in rural areas and the other provisions in the operative and proposed District Plan which the proposal is in tension. Productive rural activities are currently taking place on the land and there are no site-specific considerations that could be reasonably brought to bear to support a different outcome than that articulated for the rural zones in the two District Plans.

[113] It is our judgment that the appeal should be declined. Costs are reserved.

For the court:

Jane 3



J E Borthwick
Environment Judge

APPENDIX 5: DRAFT CONDITIONS

Consent Type: Land Use Consent

Consent Number: SUB-2020-601

Purpose: Office Activity.

Location of Activity: 266 Hanover Street , Dunedin.

Legal Description: Lot 1 DP 19139 (Record of Title 41879).

Lapse Date: XXXXX 2026, unless the consent has been given effect to before this date.

Conditions:

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 26 November 2020, and further information received on 15 January 2021, except where modified by the following conditions.*
2. *The applicant must submit a comprehensive travel management plan to DCC Transport, prior to the commencement of the activity. The travel management plan must provide measures that assist with decreasing private motor car dependence when travelling to and from the site in order to reduce parking demand associated with the activity. The plan must also include a timeframe for ongoing review, no greater than every 2 years. The travel management plan must be approved by DCC Transport and put into effect, prior to commencement of the activity.*
3. *Secure, covered bicycle storage must be provided on the site, along with associated changing facilities, in order to ensure that adequate provision is made for site occupants to access the site via alternative modes of transportation. The number of bicycle storage spaces should be determined as part of the development of the travel management plan, required by Condition (2), above.*

Advice Notes:

Transportation

1. Transport considers that the applicant has lodged the application with full knowledge of the current level of available kerbside and off-street parking provision within the vicinity of the site. The applicant must also accept that Transport reserves the right to review kerbside parking restrictions in the vicinity of the site in the future.

General

2. In addition to the conditions of a resource consent, 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.
3. 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.
4. 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.
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
6. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.