



18 July 2025

Mr Paul Napier
C/- TL Survey Services Ltd
PO Box 901
Dunedin

Via email: lana@tlsurvey.co.nz
napiern@yahoo.com

Dear Paul

RESOURCE CONSENT APPLICATION:

LUC-2023-36
12 ANNIE STREET, OSBORNE

The above application for earthworks at 12 Annie Street, Osborne was processed on a limited-notified basis in accordance with section 95 of the Resource Management Act 1991. A Hearing Panel, comprising Independent Chairperson Louise Taylor and Councillors Kevin Gilbert and Steve Walker, heard and considered the application at a hearing on Friday 13 June 2025.

At the end of the public part of the hearing, the Panel, in accordance with section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

A site visit was undertaken by the Hearing Panel on Friday 20 June 2025.

The Committee has **approved** consent to the application on 18 July 2025. The full text of this decision commences below.

The Hearing and Appearances

The applicant was represented by:
Mrs Sarah Mason and Ms Abbey Napier.

Submitters attending were:

Charles Lamb agent for Jodie Gilmour (not present) of 13 Annie Street, Anthony Ferguson of 13 Annie Street.

Council staff attending were:

Phil Marshall (Advisor to Committee), Elisabeth Boyle (Processing Planner), Lee Paterson (Senior Geotechnical Engineer, Stantec), Simon Smith (Asset and Funding Manager), Luke McKinlay (Landscape Architect) and Wendy Collard (Governance Support Officer).

Procedural Issues

No procedural issues were raised.



Principal Issues of Contention

The principal issues of contention are as follows:

- Whether the earthworks (including recent remediation works) and resulting accessway meet geotechnical and transportation requirements,
- Whether impacts on amenity can be suitably mitigated, and
- To what extent the loss of access to neighbouring properties has relevance to this matter.

Summary of Evidence

Introduction from Processing Planner

Ms Boyle read a prepared statement relating to her Sec 42A report (planner's report), including setting out the retrospective nature of this application for earthworks consent under the Dunedin District Plan (2GP). Ms Boyle confirmed that all remedial works have been completed.

Limited notification of the application, to nearby property owners, resulted in two submissions being received. Both raised concerns about the earthworks that had been carried out, and the consequences of this work and possible future fencing on access to their properties.

With respect to the lack of legal and formed access to properties near 12 Annie Street, Ms Boyle stated that this was a civil matter between the parties and was not directly relevant to the current application for earthworks consent. However, legal advice had confirmed that any removal of the informal access across the applicant's property to neighbours could be considered as an effect on their amenity values.

The Hearings Panel asked Ms Boyle and other Council staff several questions.

Ms Boyle understood that the access to properties in lower Annie Street had not been formed in legal road because of topographical considerations. Mr Smith from Council's Transportation Department advised that Council was not under any obligation to provide physical access to a property even though paper roads may be present. This contrasts with the situation where new lots are being created via the land development process. In this situation, as part of a subdivision consent, developers are obliged to comply with minimum standards of access formation for roads, access lots and rights of way.

The Panel clarified with staff that while Mr Napier had carried out work in the legal road no resource consent under the 2GP was required. Nevertheless, he was not authorised by the "owner" of the road being Council itself to do any work within the road reserve.

The Panel worked through the recommended conditions with Ms Boyle and the other Council staff.

Mr Paterson was invited to comment on the stability of the earthworks. Having seen the original earthworks carried out by Mr Napier and after reviewing the more recent remedial earthworks, Mr Paterson confirmed he was comfortable with the stability of the earthworks on the site. He considered a maintenance regime was required and advised that recommended condition 3 (maintenance of drainage) would be better worded as a performance-based condition.

Mr McKinlay was asked to comment on the earthworks as they currently exist from a landscape perspective. While the earthworks have only a minor effect on the amenity of properties close to 12 Annie Street, Mr McKinlay was concerned that the re-graded batter was still too steep for re-grassing to be carried out. He had recently measured the slope as being in the order of 1 vertical to 1.5 horizontal (1:1.5). As a consequence, he recommended that proposed condition 2 be amended to require hydroseeding on the main batter slope between the two tracks, this batter having been regraded and stabilised by the remediation work carried under engineering supervision in February 2025.

The Applicant's Case

While Mr Napier was not present at the hearing, his daughters Mrs Mason and Ms Napier spoke on his behalf and assisted the panel in understanding some of the history of the area and Mr Napier's motivation in carrying out the earthworks. They read a written statement from Mr Napier.

The statement traversed the history of the original access which was created in 1969 to what were then several cribs to the Southeast of unformed Annie Street. The previous owner of 12 Annie Street, Mr Ron Birchall carried out this work on the understanding that access across his land was only available at holiday times and that it was fenced off with a gate at other times.

Since then, the area has become more settled with permanent residents. Mr Napier has always had the best interests of Osborne residents at heart as evidenced by his involvement with the Osborne Township Amenities Society and the Port Chalmers Fire Brigade. In 2022 Mr Napier decided to create a new access to the properties. This access was still on his land, but positioned further to the East so that it was less invasive with regards to 12 Annie Street and its future potential use.

Mrs Mason and Ms Napier circulated photos of the original work carried out by Mr Napier in mid-2022 and subsequent text message exchanges between Mr Napier and neighbours. These messages clearly indicated a strained relationship between the two parties.

Commissioner Taylor took the applicant's representatives through the proposed conditions of consent. The main point of contention was proposed condition 3 requiring re-grassing of the main batter slope and with the additional work suggested by Mr McKinlay of hydroseeding the batter because of its steepness. The applicant's representatives were not in favour of hydroseeding but indicated it was Mr Napier's intention to plant out the batter in native vegetation over time. They also raised concerns about the requirement to clear the drains monthly in the recommended conditions.

Submitter's Presentation

Mr Lamb acting as agent for Ms Jodie Gilmour (13 Annie Street) acknowledged that Mr Napier had been good to residents over the years by allowing informal access over his land.

In submitting on Ms Gilmour's behalf, Mr Lamb said that the earthworks application, the subject of this hearing, should be paused while the DCC constructs a driveable road to all the relevant properties.

Mr Ferguson, Ms Gilmour's partner, responded to a question from the panel about buying the property at 13 Annie Street and any due diligence carried out at the time of purchase. He indicated they bought their home 7 years ago and at the time they thought that they were the beneficiaries of an access easement over 12 Annie Street being Mr Napier's land.

Mr Ferguson's issues with the access to his property as it now exists are that it is too steep, being more suitable for a four-wheel drive vehicle, and that in wet weather stormwater runs off the formation onto the area near his house which he uses for parking.

Ms Napier, in answering a question from the Panel about the possibility of a fence being constructed by Mr Napier to block access, confirmed that this had only been talked about out of frustration over the whole situation.

It was explained that Mr Napier is still prepared to allow access to the properties in question. He is prepared to grant appropriate rights of way over his land if he does not have to pay for the legal process of creating these rights.

Processing Planner's Review of Recommendation

Ms Boyle confirmed her recommendation that the application for retrospective earthworks be granted. The Panel asked that Ms Boyle provide an updated set of conditions, to be provided to the applicant for comment, for the Panel's consideration following the hearing. These updated conditions were provided on the 19th of June.

Applicants Right of Reply

The applicant's right of reply was received on the 27th of June in accordance with the timetable set by the Panel.

The right of reply reiterated the applicant's concerns with Council's approach to the whole matter, and the fact that at the time Mr Napier he did not know earthworks consent under the Dunedin District Plan was required.

In terms of proposed conditions of consent the applicant does not agree to providing a planting plan or hydroseeding the main batter between the old and new access formations. Nevertheless, he is prepared to revegetate the area himself using locally sourced plants.

As mentioned at the hearing the applicant is prepared to enter into negotiations with residents regarding the creation of a possible right of way over 12 Annie Street.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan being the now almost completely operative 2GP: 6 Transportation and 8A Earthworks.

Statutory provisions considered included Section S104c, 104B, 104D and Section 106. Regard was also given to the Regional Policy Statement for Otago. The Panel accepts this assessment.

Main Findings on Principal Issues of Contention

The Hearings Panel has considered the evidence heard, the relevant statutory and plan provisions, and the principal issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which considered all information presented at the hearing and the applicant's reply following the hearing, was held during the public-excluded portion of the hearing. The Panel reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken during the public-excluded portion of the hearing. The Committee inspected the site, and this added physical reality to the Panel's considerations.

*That pursuant to Section 34A(1) and 104B and after having regard to Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan (2GP), the Dunedin City Council **grants** consent to a **restricted discretionary activity** being earthworks to change access to and within 12 Annie Street, Osborne legally described as Lot 1 DP397919 (Record of Title 388398).*

Reasons for this Decision

1. The Panel agrees that the proposal is a restricted discretionary activity under the relevant provisions of the 2GP which are beyond legal challenge and deemed operative by Section 86F of the RMA.
2. The Panel agrees that in this case there is limited relevant permitted baseline that could be applied to the effects assessment that would provide for the disregarding of effects of the proposal, other than to note that small scale earthworks is permitted, as are fences.
3. The Panel accepts that Council is not required to provide formed access to the properties at lower Annie Street, and in addition that Mr Napier has no obligation to provide this access. However, from its site visit, the Panel agrees with Mr Ferguson that the access to their 13 Annie Street property is less than ideal in terms of gradient and stormwater runoff. The Panel encourages DCC Transportation to consider carrying out minor stormwater works at the intersection of Bradley Road and Annie Street. The purpose of this work would be to control stormwater coming off the main batter in 12 Annie Street and directing it via a cutoff drain onto the unformed portion of Annie Street clear of the parking area utilised by 13 Annie Street.
4. The Panel accepts Ms Boyle's assessment that the works are consistent with the relevant objectives and policies of the 2GP.
5. The Panel agrees with Ms Boyle that in relation to each matter of discretion under the relevant provisions of the 2GP, the proposal, considering the remedial works and appropriate conditions, is acceptable.
6. Importantly, whilst the initial earthworks were completed without resource consent or expert management, geotechnical engineering design and supervision (by Geosolve) for the remedial works took place, and this was peer reviewed by Council's consultant engineer, Stantec. We therefore conclude that the effects on the stability of land, buildings, and structures are acceptable.
7. The Panel accepts that impacts of the work on the site in terms of neighbour's amenity is limited, particularly as Mr Napier has confirmed he intends to retain the informal access across his property to the lower Annie Street residents.
8. The Panel considered the concerns raised by Mr Napier regarding being required to either hydroseed the battered slopes or provide a planting plan to Council. However, the Panel agrees with Mr McKinley's evidence at the hearing that the batters should be either hydroseeded or otherwise comprehensively planted to assist with stability and visual effects. Given the fragile nature and steepness of the batters, if Mr Napier chooses not to hydroseed, we consider a planting plan should be approved by Council to ensure suitable coverage is achieved. A condition requiring this is imposed (Condition 2).
9. The Panel concludes that granting consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Appeal

Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) *A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of “boundary activity”, and refer to Section 95A(6) for definition of “residential activity”.)

For all other applications, in accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Yours faithfully



Louise Taylor
Independent Chair
Hearings Committee



Consent Type: Land Use Consent

Consent Number: LUC-2023-36

Purpose: Retrospective consent for earthworks relating to a driveway access.

Location of Activity: 12 Annie Street, Osborne

Legal Description: Lot 1 DP 397919 (Record of Title 388398)

Lapse Date: There is no lapse date.

Conditions:

1. *The activity must be undertaken in general accordance with the approved plan attached to this certificate as Appendix One, being a revision of the original site plan that was submitted with the application, and further information received on 28 November 2024, except where modified by the following conditions.*

2. *In order to mitigate visual amenity effects of the completed earthworks, the consent holder must:*

EITHER

- a) *Hydroseed battered slopes. Hydroseeding must be undertaken in general accordance with the "NZTA P39 Standard Specification for Highway Landscape Treatments". Hydroseeding must occur between September and November 2025.*

OR

- b) *A planting plan must be submitted to Council for approval (via rcmonitoring@dcc.govt.nz) by 1 September 2025. The planting plan must provide details of all proposed planting on the remediated batter slope. All proposed planting must consist of locally appropriate native species. The plan must include the botanical name, common name, numbers, size at planting, plant spacings and mature height of all proposed planting. The plan must identify how planting will be protected from animal browsing and how weeds will be managed (it is anticipated that plant protectors will be required to protect plants from animal browsing. Given the steepness of the slope, biodegradable weed matting rather than mulch will be required for weed control). Planting identified in the approved planting plan must take place prior to 30 September 2026. All planting must be maintained for the duration of the consent. Any dead, dying, or damaged plants must be replaced within the following planting season.*
3. *To ensure effective drainage of the accessway, the existing drainage system must be maintained in a clear and unobstructed condition until such time as the cut faces have achieved a minimum of 80% vegetation cover.*



4. *If the consent holder:*

- a) *discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Māori artefact material, the consent holder must without delay:*

- i) *notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.*
- ii) *stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate Rūnanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.*

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

- b) *discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:*

- i) *stop work within the immediate vicinity of the discovery or disturbance; and*
- ii) *advise the Consent Authority, Heritage New Zealand, and in the case of Māori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to Heritage New Zealand Pouhere Taonga Act 2014; and*
- iii) *arrange for a suitably qualified archaeologist to undertake a survey of the site.*

Site work may not recommence before consultation with the Consent Authority.

Advice Notes:

Dust and sediment control

1. Noise, dust, and sediment effects are controlled by 2GP rules 4.5.4.1.a (construction noise), 8A.5.12 (dust control), and 8A.5.7 (sediment control). The completed remediation works are required to comply with those rules.
2. To ensure effective management of erosion and sedimentation on the site, it is recommended that measures be taken, where necessary, to:
 - a) divert clean runoff away from disturbed ground,
 - b) control stormwater run-off, and
 - c) avoid sediment laden run-off from the site.

Transportation

3. The applicant should note that the Council regards the vehicle access that lies to the south-east of the existing sealed Council road formation to be a private access on a legal road, and will not assume any responsibility for its maintenance.
4. If a right of way easement is created over 12 Annie Street in the future, a formal agreement should be drawn up between the owners/users of all private accesses in order to clarify their maintenance responsibilities.

General

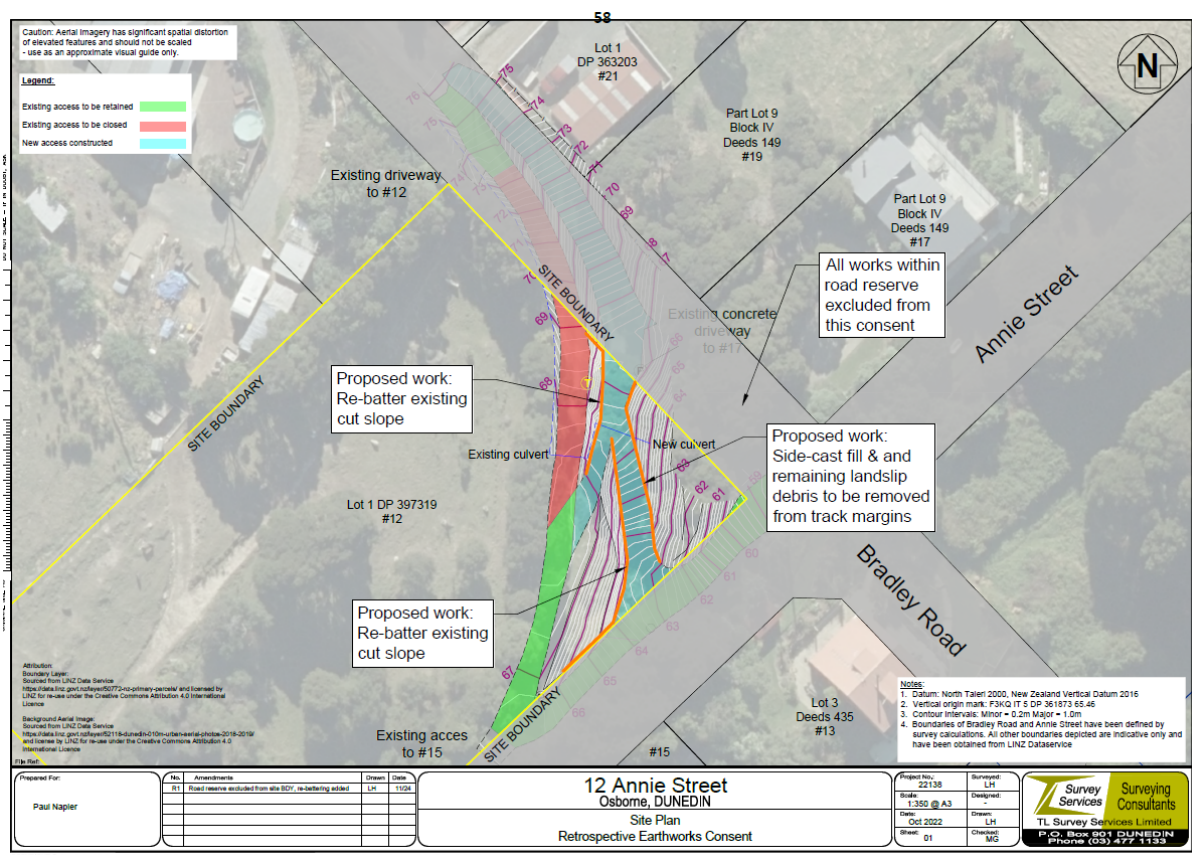
5. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
6. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
7. 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.
8. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
9. This is a resource consent. Please contact the Council's Building Services Department, about any building consent requirements for any future building work.

Issued at Dunedin on 18 July 2025

A handwritten signature in black ink, appearing to read 'Louise Taylor', with a stylized, flowing script.

Louise Taylor
Independent Chair
Hearings Committee

Appendix 1 – Approved Plan



COPYRIGHT © These drawings and any content to be prepared for which they were supplied. Any reuse or publication without the written permission of TL Survey Services Ltd.