

TO: Hearings Committee

FROM: Elisabeth Boyle, Planner

DATE: 25 March 2025

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2023-36
12 Annie Street, Osborne

APPLICANT: Paul Napier

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 25 March 2025. The purpose of the report is to provide a framework for the Committee's consideration of the application and the Committee is not bound by any comments made within the report. The Committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] I consider that the application should be granted.
- [3] I consider that the adverse effects of the earthworks will be no more than minor as remediation measures have been undertaken to enhance the stability of the batters and to make sure stormwater runoff is directed to a water table in the road reserve.
- [4] The application involves a completed earthworks project on private land that has negatively affected the stability of land and the amenity of surrounding properties. The activity also involves the proposed establishment of a boundary fence. Overall, both the completed earthworks and the proposed boundary fence are considered to have a minor effect on the amenity of three neighbouring properties - an effect that is closely linked to impaired access to the affected properties. However, the proposed boundary fence is a permitted activity, and no right of way easement exists to the benefit of the affected parties. Therefore, considering the limited range of matters that council has discretion to consider, and considering that work has already been completed to remediate the original earthworks breaches, it is my opinion that the relevant adverse environmental effects of the activity can be adequately mitigated through conditions and will not be significant to the wider environment.
- [5] I consider the application to be inconsistent, but not contrary to the key policies of the Partially Operative Second Generation District Plan relevant to this application. I therefore consider that it is open to the panel to consider granting consent for the proposal.

SUMMARY OF PROPOSAL

- [6] Retrospective resource consent is sought for earthworks already undertaken for the realignment of an existing accessway. Since the application was submitted, the area of the subject site has been reduced, and the scope of the application has been changed. Remediation earthworks have been completed. A proposed boundary fence with gates is yet to be established.
- [7] A copy of the original application is contained in Appendix 1 of this report.
- [8] A copy of the revised site plan, showing the reduced area of the works, is contained in Appendix 2 of this report.

DESCRIPTION OF SITE AND LOCATION

- [9] The subject site is freehold, legally described as Lot 1 DP 397919 (held in Record of Title 388398). It has an area of 0.4047 ha. There are no easements registered on the title (right of way or otherwise). Consent notice 7694857.2 is imposed on the title:
 - i. *Prior to residential activity occurring on the site a report shall be obtained from a suitably qualified person confirming the suitability of Lot 1 for establishment of a dwelling. Any site mitigation measures that are identified in the report as necessary to ensure slope stability are to be implemented in accordance with the reports recommendations.*
 - ii. *In the absence of a site-specific design by a suitably qualified person the on-site effluent disposal system shall be situated on slopes not exceeding 15° to the horizontal.*
- [10] The subject site is rectangular and slopes steeply to the horizontal in a south-easterly direction. Council's GIS Data Map registers a slope of 15-20 degrees at the relevant part of the site. The site occupies the land bounded by Annie Street and Bradley Road, Osborne, both of which are unformed roads in that location. The site is vacant of development, with two existing, unsealed access ways traversing the north-eastern corner, thereby forming an access link between the Bradley Road and Annie Street road reserves. The formation history of these access ways is explained in the Background section below. Figure 1 below contains an aerial photograph extract of the subject site and surrounding sites (dated 2023-2024), showing the location of the original access road (to the west) and the new access road (to the east). The photograph is overlaid with approximate boundary lines and contour lines.

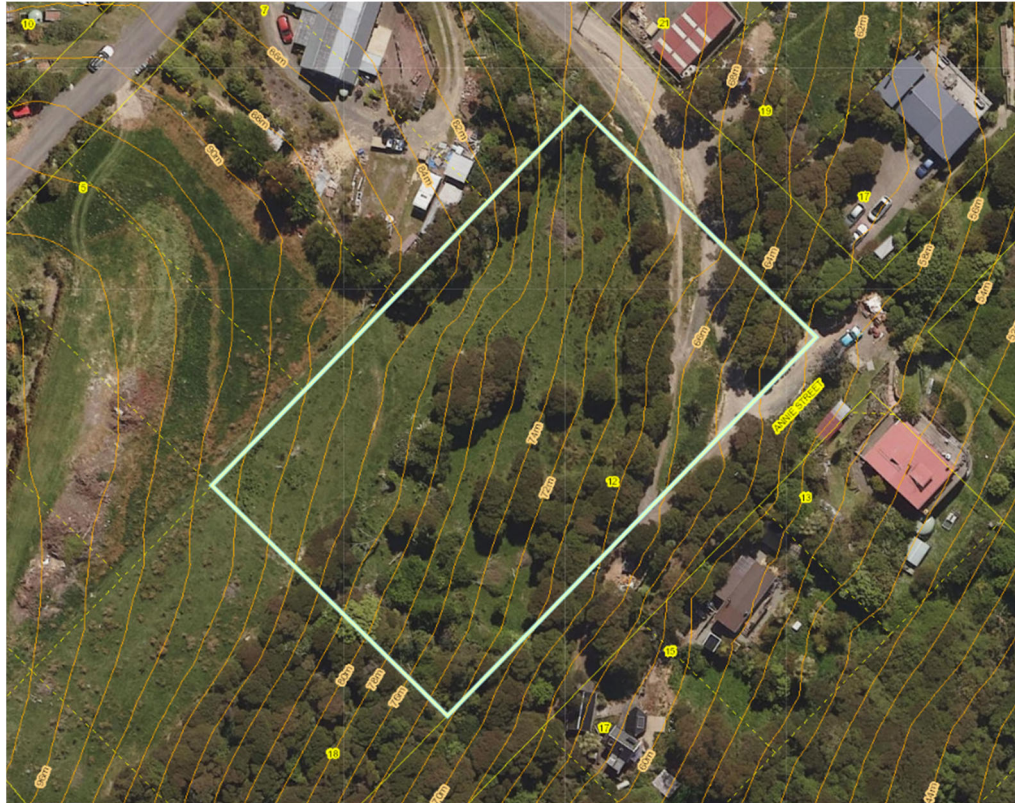


Figure 1: image showing the subject site and surrounding properties.

- [11] The image in Figure 1 also shows existing dwellings situated at the surrounding sites of 17, 15, and 13 Annie Street and 17 Bradley Road. Since the adjacent roads are unformed (they are what is commonly referred to as ‘paper roads’), vehicular access to these sites is only achievable over the access formations that traverse 12 Annie Street.
- [12] The subject site is near the south-eastern edge of the settlement of Osborne. The surrounding topography is similarly steep, with an aspect to the south-east. Kanuka dominant forest and scrub encircles Osborne to the south, west and north. Fragments of this vegetation type are also present within 12 Annie Street, scattered amongst pastoral areas.
- [13] There is no council-owned reticulated water or wastewater infrastructure present within the subject site or within the surrounding area.

HISTORY OF THE SITE AND BACKGROUND TO THE APPLICATION

- [14] The subject site was created by way of boundary adjustment subdivision SUB-2007-185. No easements were conditioned as part of that subdivision consent.
- [15] The neighbouring sites to the north-east and south-east (17, 15, and 13 Annie Street, and 17 Bradley Road) were created in the 1930s. Those sites all have physical and legal access to Annie Street and Bradley Road, respectively. However, due to the steep local topography, no formed carriageway has been developed adjacent to those properties by Council. 17, 15, and 13 Annie Street, and 17-19 Bradley Road therefore have legal road access but no formed access suitable for vehicles. Pedestrian access is also difficult to achieve due to the local steep terrain and mature vegetation present within the road reserve.

- [16] The original developments on these neighbouring sites were cribs, and the only way to access them was by way of walking tracks. The applicant has explained that, in the 1960s, the former landowner of 12 Annie Street formed a vehicular access way that curved through the eastern corner of 12 Annie Street and switched direction due north when it reached the road reserve before continuing towards the Bradley Road-Annie Street intersection. It is my understanding that occupants of the downslope neighbouring sites have used the access way to reach their sites ever since. No right of way easement was put in place however, so the use of the access way has been at the pleasure of the owner of 12 Annie Street.
- [17] On 1 June 2022, a complaint (COM-2022-66) was lodged with Council for unconsented earthworks that had been undertaken within 12 Annie Street as well as within the Bradley Road and Annie Street road reserves. The unconsented earthworks created a new access way to the east of the original access way within 12 Annie Street. Council's consultant engineer, Stantec New Zealand Ltd (Stantec) visited the site in June 2022 as part of the compliance investigation. During that visit, they flew a drone to help identify areas of concern, which were labelled in the drone image shown in Figure 2.



Figure 2: drone image with labels showing 2022 earthworks

- [18] The owner of 12 Annie Street, Mr Paul Napier (the Applicant), subsequently submitted a resource consent application (LUC-2023-36) on 2 February 2023, to cover both the work already done and further work proposed to be done. The application proposed to undertake remediation earthworks both within the road reserve and within 12 Annie Street. The legend included on the site plan showed that part of the original access way was to be closed, while the new access way was to be retained. The application also noted that unspecified retaining structures (one retaining wall and one rock buttress) were to be established. A telephone cable was also to be moved.

- [19] I issued a Request for Further Information (RFI) and placed the application on hold Pursuant to s92(1) of the Resource Management Act 1991 (RMA) on 8 February 2023. The RFI required:
1. A long-section of the entire accessway, including the part that is located within the road reserve,
 2. A more detailed site plan, including the location of the proposed retaining structures,
 3. Design details of the proposed retaining structures,
 4. Confirmation of the maximum change in ground level caused by the cut already carried out,
 5. Written approval from the owners of the existing telecommunications and electricity utilities at the subject site,
 6. Sedimentation and erosion mitigation measures pertaining to the outfall from the drainage beneath the new access road, and
 7. A geotechnical assessment.
- [20] A site visit was conducted on 9 February 2023. Photographs taken during the site visit are included in Appendix 3.
- [21] The application remained on hold for an extended period of time while Council's Transportation Department (DCC Transport) and Mr Napier corresponded on the subject of the required remediation of the access way and land tenure. In August 2024 it became clear that their correspondence had not borne fruit, and I arranged for a second site visit for 29 August 2024. In attendance during that site visit were: Simon Smith (Asset and Funding Manager, DCC Transport), Nic Jepson (Senior Planner, Resource Consents), Peter Woods (Monitoring and Enforcement Officer, Resource Consents), Cory Barnes (Compliance Officer, Building Services), and myself. Paul Napier and Sarah Napier (the applicant's daughter) were on site at the time.
- [22] During the site inspection, Council's Building Compliance Officer assessed that the site drainage was acceptable. He also confirmed that the original cuts required remediation and that he would issue a Notice to Fix (NTF) in that respect.
- [23] During the site inspection, Mr Napier (the applicant) stated that he no longer wanted any work within the road reserve to be part of the resource consent application. I explained that a new site plan would be required for this reduced scope and that he would still need to submit the relevant outstanding items from the original RFI.
- [24] DCC Building Services issued a Notice to Fix (NTF) on 16 September 2024 (NTF-2024-277). The NTF required:
1. *Apply for a building consent under section 45 of the Building Act 2004 for the erection of a suitable retaining structure,*
- OR*
2. *Batter the bank back to no less than a 1-1 ratio.*
- [25] In October 2024, Dunedin City experienced an extreme weather event in the form of heavy rainfall. During that weather event, a minor land slip occurred at the subject site.
- [26] The applicant confirmed via email on Thursday 28 November 2024 that, on advice from his engineer, he had opted to batter the original cuts rather than constructing a retaining wall and rock buttress. He further confirmed via email on 3 December 2024 that the final

width of the new access way (the eastern access way) will be 'around 3 meters', and that he intends to restrict access over 12 Annie Street to emergency services only – by way of road boundary fencing and locked gates. Those changes form part of the application's new scope.

[27] The applicant completed the abovementioned remediation works in January 2025. Council's Building Compliance Officer Cory Barnes confirmed a 1:1 batter in a letter on 29 January 2025, thereby resolving NTF-2024-277.

[28] The following report is based on the new application scope, which includes:

- retrospective consent for the original earthworks within the property boundaries of 12 Annie Street only, being the land owned by Mr Napier,
- remediation earthworks in the form of reducing the slope of the cut and fill batters created at the time of the original earthworks,
- moving of an existing telecommunications network facility, and
- the erection of road boundary fencing and gates.

DESCRIPTION OF PROPOSAL

[29] As mentioned above, resource consent is sought retrospectively for earthworks undertaken at 12 Annie Street, Osborne. When the application was initially submitted, further works (such as the establishment of retaining structures) were proposed. In terms of the purpose for the works, the application stated, ""*The track constructed is intended for the use of all the surrounding residential properties, including the applicant*". Since then, the overall scope of the application has been amended and remediation earthworks have been carried out. Work yet to be completed comprises the establishment of road boundary fencing with locked gates.

[30] The earthworks already undertaken in 2022 to construct the new access way involved:

1. Excavation of material was carried out within both the road reserve and 12 Annie Street for the construction of the new access road. The approximate excavated area was 374m² and volume excavated was 134m³. The cuts are illustrated on the plans and cross-section submitted with the original application. The application states that the maximum depth of excavation was 1.3m with maximum slope of cut batters at 0.7h:1v.
2. Measurements made by myself and Compliance Officer Peter Woods during the site visit on 29 August 2024 showed that the maximum change in ground level was between 1.7-1.8m. Several cut and fill batter gradients exceeded 45°.
3. The earthworks had been carried out less than 1.5m distance from an existing telecommunications 'dome' and an electricity pole at the site.
4. Approximately 70m³ of crushed concrete fill had been placed on the new access way, both within the road reserve and within 12 Annie Street. This crushed concrete was 300mm deep and was originally intended to be a base layer that was to be compacted before a layer of AP20 was compacted on top.
5. The application states that metal 'was also sourced from Palmers for the portion of the new access that joins with the existing access as it runs south, referred to as the ramp by the applicant'.
6. A 250 mm dia culvert was placed under the new access way, to divert stormwater runoff into an informal drain that discharges onto the eastern corner of the site of 12 Annie Street.

[31] The proposed earthworks initially included:

1. Construction of a rock buttress 'downhill of the southern portion of the new access near 13 Bradley Road'.
2. Construction of a retaining wall 'along the western side of the new access at the southern end where the largest cut has been made exceeding the permitted 1h:1v ratio'.
3. Relocation of the existing telecommunications network utility (marked 'P' on the site plan).
4. Partial closure of the original access way.

[32] As explained in the Background section above, the scope of the application has been amended as follows:

1. The site of works has been reduced to 12 Annie Street only; the previously proposed work within the road reserve has been removed from the application. This has been reflected in the new site plan. As shown by the site plan's legend, the new access way (the eastern access way) is to be retained, while the original access way (the western access way) is to be partially closed.
2. Cut and fill slopes will be re-battered. Those works will replace the previously proposed retaining wall and rock buttress.
3. The width of the new (eastern) access way is to be approximately three meters.
4. A boundary fence with gates is proposed to be erected along the subject site's road boundaries, restricting access to 12 Annie Street to emergency services only. The proposed fence has not been shown on the amended site plan.
5. The applicant mentioned via email on 16 September 2024 that 'planting' will be carried out along the original drive at the conclusion of the works. No planting plan has been provided.

ACTIVITY STATUS

[33] Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 ("the District Plan 2006"), and the Proposed Dunedin City Second Generation District Plan ("the 2GP"). On 19 August 2024, the 2GP became partially operative and now supersedes the District Plan 2006, except for limited specific provisions and identified areas that are still subject to appeal. Where these provisions and appeals are relevant, the District Plan 2006 must still be considered. In this instance, there are no relevant appeals, and this application has been processed with reference to the 2GP only.

[34] The activity status of the application is fixed by the rule provisions in place when the application was first lodged, pursuant to section 88A of the Resource Management Act 1991. However, it is the rule provisions in force at the time of the decision that must be had regard to when assessing the application. This application was submitted before the 2GP became partially operative. None of the applicable activity statuses have changed since the application was lodged.

Partially Operative Dunedin City Second Generation District Plan 2024

[35] Zoning: The subject site is split zoned. The western half is zoned Rural Residential 2 and is subject to the Significant Natural Landscape overlay zone of Pūrākaunui and Orokonui. The eastern half is zoned Township and Settlement and is situated within the Archaeological Alert Layer and No DCC Reticulated Wastewater mapped areas. The part of the site that is subject to this application is the eastern half.

[36] Definition: The proposal falls under the definition of Earthworks, which is a city-wide activity:

The disturbance and alteration of land surfaces by the re-contouring of land and/or the excavation or deposition of materials including clean fill, soil, or rock. This definition excludes:

- *earthworks associated with cultivation, harvesting and tilling, which are included as part of the definition of farming;*
- *earthworks associated with quarrying or mining, which are included as part of the definition of mining;*
- *vegetation clearance that is associated with earthworks, which is included as part of the definition of vegetation clearance;*
- *earthworks associated with the maintenance of: sports fields, landscaping or gardens, farm tracks, private roads, private ways, dams, farmyards, drains, farm service areas, silage pits, and fences; which are not managed by the Plan; and*
- *earthworks that meet the definition of natural hazard mitigation earthworks.*

*The following activities are managed as sub-activities of earthworks:
earthworks - large scale; and
earthworks - small scale.*

This definition is currently subject to 2GP Plan Change 1 but the proposed changes will have no bearing on the proposed activity. I note that while the definition excludes maintenance of private roads, it does not exclude the creation of new private roads.

[37] Activity status: The completed and proposed earthworks are **restricted discretionary** activities, for the reasons listed below.

- **Rules 8A.5.1.3 and 8A.3.2.3** - change in finished ground level:
Pursuant to Rule 8A.5.1.3, the maximum change in finished ground level to be considered earthworks – small scale in residential zones is 1.5m. The change in ground level resulting from the earthworks already undertaken was measured to be 1.7-1.8m. Since the change in ground level is over 1.5m in height, it is considered to be Earthworks Large Scale. Pursuant to Rule 8A.3.2.3, the activity status for Earthworks Large Scale is **restricted discretionary**.

Pursuant to Rule 8A.7.2, Council's discretion is restricted to:

- Effects on visual amenity,
➤ Effects on amenity of surrounding properties, and
➤ Effects on the stability of land, buildings, and structures.
- **Rule 8A.5.3** – batter gradients:
Earthworks must:
 1. have a maximum cut batter gradient of 1h:1v (i.e., rising 1m over a 1m distance); and
 2. have a maximum fill batter gradient of 2h:1v (i.e., rising 1m over a 2m distance)

The retrospective earthworks breach the cut batter rule as can be seen on the B-B long section, and was observed by myself during past site visits. The work also breaches the fill batter gradient where side cast fill is sitting on the eastern shoulder of the new access way. Activities that contravene this performance standard are **restricted discretionary** activities.

Pursuant to Rule 8A.6.3.1, Council's discretion is restricted to:

- Effects on the stability of land, buildings and structures.
- **Rule 8A.5.4.1.a** – setback from property boundaries:
Earthworks over 600mm in height or depth not supported by retaining walls must be set back from property boundaries the following minimum distances:
 - i. a distance at least equal to the maximum height of the fill, as measured from the toe of the fill;
 - ii. a distance at least equal to 1.5 times the maximum depth of the cut, plus 300mm, as measured from the toe of the cut; and
 - iii. 300mm, as measured from the crest of any cut.

The completed earthworks breach this rule at the north-east boundary of the Bradley Rd road reserve, and at the south-east boundary of the Annie St road reserve. Pursuant to rule 8A.5.4.2, activities that contravene this performance standard are **restricted discretionary** activities. Pursuant to rule 8A.6.3.2, Council's discretion is restricted to:

- Effects on the stability of land, buildings and structures.
- **Rule 8A.5.6** – setback from network utilities:
Earthworks must comply with rule 5.6.2, which requires that earthworks must be set back 1.5m from network utilities. The original earthworks were carried out within this setback in terms of a 'Telecom dome' (depicted with a 'T' on the site plan) and also around the power pole south of the driveway to #17 Bradley Road. Pursuant to rule 5.6.2.2, Activities that contravene this performance standard are **restricted discretionary** activities. Pursuant to rule 5.7.4.2, Council's discretion is restricted to:
 - Effects on health and safety, and
 - Effects on efficient and effective operation of network utilities.

- **Rule 6.6.3.3.a.i:** - maximum width of vehicle access:
The maximum width for a vehicle access for residential purposes is 6.0m. The new vehicle access terminating at Annie Street appears to be around 10m, breaching this rule. Pursuant to rule 6.6.3.3.b, activities that contravene this performance standard are **restricted discretionary** activities. Pursuant to rule 6.10.5.2, Council's discretion is restricted to:

➤ Effects on the safety and efficiency of the transport network.

- **Rule 6.6.3.6.b:** - surfacing of driveways:
The full length of any driveway that serves more than 2 residential properties must be hard surfaced. The new access way will not be hard surfaced, which is a breach of this rule since the access way serves more than 2 residential properties. Pursuant to rule 6.6.3.6.c, activities that contravene this performance standard are **restricted discretionary** activities. Pursuant to rule 6.10.5.6, Council's discretion is restricted to:

➤ Effects on the safety and efficiency of the transport network.

- **Rule 6.6.3.7.b** – gradients of driveways
The gradient of the first 5m measured from the road boundary into the site must be no greater than 1 in 8. While the gradient of the first 5.0m of the new accessway has not

been provided, I consider it unlikely that this requirement has been complied with, given its obvious steepness. Pursuant to rule 6.6.3.7.c, activities that contravene this performance standard are **restricted discretionary** activities. Pursuant to rule 6.10.5.6, Council's discretion is restricted to:

- Effects on the safety and efficiency of the transport network.

National Environmental Standards

- [38] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) came into effect on 1 January 2012. The NES-CS applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the soil contamination NES-CS and/or might require resource consent.
- [39] The subject site is not listed as a HAIL site in the Otago Regional Council's Land Use Register. I have searched the Council's consent record for the subject site and have not found any evidence that a HAIL activity has occurred on the site. I note that the earthworks described above included placing fill in the form of gravel and crushed concrete. If that fill does not constitute clean fill, then Category G5 (Waste disposal to land) may potentially apply. In this situation, however, the land where fill was placed is to be used as an access road and no subdivision, change of use, residential activity or other sensitive activity is proposed for the site. I therefore consider that the NES-CS does not apply in this instance.
- [40] There are no other National Environmental Standards relevant to this application.

Overall status

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

In this case, the rules all have the same activity status. The proposal is therefore a **restricted discretionary** activity.

NOTIFICATION AND SUBMISSIONS

- [42] No written approvals were provided with the application at the time of lodgement. However, the applicant subsequently provided written approvals in the form of emails from the parties listed in the Table 1 below:

Name	Position	Company	Obtained
Jangez Khan	Network Project Manager	Chorus	29 March 2023
David Steele	Project Manager	Powernet.co.nz	9 March 2023

Table 1: List of parties that have provided written approval

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

[44] In terms of affected parties, the application states as follows:

There are multiple parties affected as they used the existing track for vehicular access to their residential properties:

- 21 Bradley Road
- 19/19A Bradley Road
- 17 Bradley Road
- 13 Annie Street
- 15/17 Annie Street

No formal consultation was undertaken.

[45] During the processing of this application, Council received communications from the owners and residents of these properties, expressing their concerns pertaining to the trafficable state of the access way that traverses 12 Annie Street (and the road reserves on either side). On 8 June 2023 I also received a telephone call from Dr Charles Lamb, acting as an agent for these neighbouring owners, expressing their concerns about health and safety. Dr Lamb informed me that sanitary truck services had now refused to service some of the neighbouring sites due to the changed accessway situation. Dr Lamb also communicated with DCC Transport at the time.

[46] When determining the extent of adverse effects, it is common practice to think about the level of effects along a continuum to ensure that each effect has been considered consistently:

- Nil Effects
No effects at all
- Less than Minor Adverse Effects
Adverse effects that are discernible day-to-day effects, but too small to adversely affect other persons
- Minor Adverse Effects
Adverse effects that are noticeable but will not cause any significant adverse environmental impacts
- More than Minor Adverse Environmental Effects
Adverse Effects that are noticeable that may cause an adverse environmental impact but could be potentially mitigated or remedied
- Significant Adverse Effects that could be remedied or mitigated
An effect that is noticeable and will have a serious adverse impact on the environment but could potentially be mitigated or remedied

[47] I agree with the applicant that the environmental effects from the earthworks that were undertaken in 2022 by the applicant in order to create the new access way over 12 Annie Street impacted negatively on the neighbouring persons listed above. The old access way served its purpose well; although it was unsealed, it posed no risk to land stability, it was well positioned within the existing environment with an appropriate gradient, and it appears to have drained effectively without effects beyond the site

boundaries. The new access way has a steeper gradient with a sharper and steeper switch-back curve at the intersection with the Annie Street (at the eastern corner). Furthermore, the earthworks that were undertaken for the construction of the new access way have had, and will continue to have, a negative effect on visual amenity and the amenity of surrounding properties, and also presented a land stability issue - as demonstrated by the land slip that occurred in October 2024.

[48] While the land stability issue has now been taken care of by battering, I consider that the activity has had a negative environmental effect on the parties listed above.

[49] "Amenity values" are defined in section 2(1) of the RMA as "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes." The Courts have emphasized the breadth of characteristics that can be considered under the ambit of "amenity". I consider that the completed earthworks (and the proposed boundary fence and locked gates) will make it more difficult than before for the neighbouring residents to the south-east to access their properties, and for essential services such as septic tank trucks to service those properties. It is my opinion that the environmental effect in the form of impaired access will result in a minor effect on the amenity of the surrounding properties as defined by the RMA. Additionally, there could be factors for residents that Council is not aware of as to why vehicle access is needed, such as possible mobility issues, that further justifies this conclusion.

[50] The lack of formal legal access (i.e., a right of way easement) across the subject does not rule out the neighbours being "affected" in an environmental sense, by the completed as well as the proposed works.

[51] I consequently consider that the neighbours could be considered "affected persons" under section 95E of the RMA.

[52] I consider that the adverse environmental effects of the earthworks would be minor but not more than minor, having regard to the existing environment and the remediation earthworks that have already been completed.

[53] Based on the above justification, it was determined that the effects of the earthworks would be restricted to a limited number of parties being the owners of the properties listed in Table 2 below:

Name	Property
Nicole Maree Rogers & Kent Ransome Rogers	17 Bradley Road
Jodie Kristina Gilmore & Antony Thomas Ferguson	13 Annie Street
Christopher Timothy Waite	15 Annie Street 17 Annie Street

Table 2: Parties served notice of the application

[54] The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 29 January 2025.

[55] I cannot consider the owners and occupiers of 21 Bradley Road and 19 Bradley Road affected since the scope of the proposal was reduced to works within 12 Annie Street only, thereby excluding the work that had been done within the official road reserves (paper roads). Vehicular access to 21 Bradley Road and 19 Bradley Road could be

achievable directly from Bradley Road following future remediation work by Council and is considered to be excluded from the application's new scope.

- [56] Copies of the application were sent by mail to the parties listed in Table 2 above, with submissions closing on 28 February 2025.
- [57] Two submissions were received by the close of the submission period. Both submissions were opposed.
- [58] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 4.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Christopher Timothy White – 15 and 17 Annie Street	Oppose	The submission opposes the establishment of a fence and gates along the road boundaries of the subject site. The submission states that there had been no issues with access to 15 and 17 Annie Street prior to the commencement of the completed earthworks. The submission states that the proposed fence and gates will remove access to 15 and 17 Annie Street. The submission seeks that the applicant reconsiders establishing road boundary fencing.	No
Jodie Kristina Gilmore & Anthony Thomas Ferguson – 13 Annie Street.	Oppose	The submission opposes the establishment of a fence and gates along the road boundaries of the subject site. The submission points out that the proposed establishment of a fence and gates contradicts the purpose for the earthworks as expressed in the original application. The submission states that the proposed fence and gates will give the applicant control over sanitation and emergency services' access to neighbouring sites. The submission states that the lack of access by sanitation services to attend septic tanks may cause sewage seepage. The submission states that poor	Yes

		drainage and under-runners will lead to environmental degradation during periods of heavy rainfall. The submission states that the situation at Annie Street is a cross-department issue for the DCC. The submission seeks that the committee delays their consideration of the application until after the relevant DCC departments have resolved the access issues at Annie Street	
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As part of a standard Limited Notified administration process, several council departments and statutory parties were served notice of the application. In response, James Sutherland, on behalf of Heritage New Zealand Pouhere Taonga (HNZPT), pointed out that:

12 Annie Street is located in close proximity to the Pūrākanui inlet which is identified on Kā Huru Manu, the Kāi Tahu atlas which is publicly available online and publishes significant cultural places within the South Island.

HNZPT recommended that the remediation earthworks that were originally proposed in the application should be assessed by a consultant archaeologist. HNZPT suggested that a condition is imposed on the consent, requiring an archaeological authority.

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[59] 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

[60] 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.

[61] In this situation, the 2GP Township and Settlement zone permits 15m³ of earthworks per 100m² of site, on sites where the slope is 20°. Based on that, the baseline for earthworks volume on the part of the subject site that is zoned Township and Settlement is 349.2m³.

Batter slope gradients, setback requirements and other performance standards would still be applicable.

- [62] Fences are a permitted activity pursuant to 2GP rule 15.3.4.4 subject to the fence being no higher than 2m and maintaining visual permeability for 50% of the length of the boundary measured at a height of 1.4m above ground level.

Receiving environment

- [63] 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.
- [64] For the subject site, the existing and reasonably foreseeable receiving environment comprises a split zoned, vacant site with scattered vegetation and two vehicular access ways traversing the eastern corner. Prior to the commencement of the original earthworks, the receiving environment would have comprised one access way rather than two.
- [65] Adjacent land to the south-west is zoned Rural Residential 2 and has a rural character featuring a mixture of meadow open space and established vegetation.
- [66] Adjacent land to the other directions broadly consists of residential zoned land and residential activities complimented with surrounding vegetation.
- [67] It is against the existing and reasonably foreseeable receiving environment that the effects of the activity, beyond the permitted baseline, must be measured.
- [68] Under Section 104C of the Act, the Council, when considering an application for resource consent for a restricted discretionary activity must consider only those matters over which its discretion is restricted, and if granting consent, can only impose conditions only for those matters over which discretion is restricted. As mentioned above, in this case the Council's discretion is restricted to:
- Effects on visual amenity,
 - Effects on amenity of surrounding properties,
 - Effects on the stability of land, buildings, and structures,
 - Effects on health and safety (in terms of earthworks within setbacks from network utilities),
 - Effects on efficient and effective operation of network utilities (in terms of earthworks within setbacks from network utilities), and
 - Effects on the safety and efficiency of the transport network.

Assessment of Effects

- [69] Consideration is required of the relevant assessment matters in the 2GP.

Effects on the stability of land, buildings and structures (2GP rules 8A.7.2.1.c, 8A.6.3.1, 8A.6.3.2)

- [70] After their initial site visit in June 2022 (mentioned in the Background section above), Stantec provided comments pertaining to the steepness of the new access way and the cuts and fill that had taken place at the subject site and within the road reserve. They also provided the following advice:

Advice

It is difficult to be overly concerned about the scale of the works from a natural hazards perspective. I think that most of the concerns over the work will actually be drivability / gradient and interruption / disruption during construction, which is yet to be completed.

Much of the work could be underwritten relatively simply by a professional, and indeed that professional might provide detailing of further earthworks to avoid construction of retaining structures. However, in its current geometry, side cast fill would have to be pulled back, and some of the excavated faces supported, as they support driveway accesses above (if this is to be retained).

- [71] Following a second site visit in February 2023, after the resource consent application had been submitted to Council, Stantec provided further comments, which aligned with the previous ones:

The road is steep and loose in places, and clearly going to be a hazard to traverse on foot or on many vehicles, due to a combination of gradient and surfacing material.

The entire outside shoulder of the road edge, between the concrete driveway to #17 Bradley, down to the Hairpin opposite #13 Bradley is failing.

The local residents made it clear that there have been near-misses of this shoulder giving way under vehicle loading. This is a safety concern.

It is very likely that this material comprises fill immediately on soil, with no stripping, benching or subsoils involved in this construction. This needs to be ripped and remade in accordance with good practice, and where the edge fill slope is steeper than 2h:1v, this will require specific engineering design, including possibly retaining works.

The steep cutting in old fill, between the recent cut track, and the new cut track, is showing signs of failure. This is clearly a potential hazard for those accessing the upper track. Especially if road users are undertaking a point-turn on top of this bank. If access is to continue above this cutting, then a retaining wall will be required. This cutting is tall enough, and supporting sufficient slope and surcharge loading, that a retaining wall here must have engineering design and building consent.

The stormwater has been concentrated into a single discharge location. This has eroded significantly in the time since the previous visit. The local landowners have attempted to place stones and rubble in this channel to reduce the rate of erosion. The culvert and discharge arrangement needs to be completely revisited to mitigate the erosion risk that has been created and avoid discharge of sediment off site.

- [72] In November 2024, Mr Napier provided a geotechnical assessment report by Geosolve (GeoSolve Ref: 240732), as requested in my RFI mentioned above. The following is an extract from that report:

Site Observations

The recent earthworks have created a track approximately 3 m in width located roughly 1-4 m east of the existing track. The track appears to have been formed primarily through a cut-to-waste method, with the excavated soils disposed of elsewhere on site. The cuts are primarily less than 1.3 m in depth, with a maximum depth of approximately 1.7 m. Batters have been formed at an average gradient of approximately 60°. The stratigraphy apparent in the cuts typically consists of firm to stiff uncontrolled fill (grey and brown clayey SILT with minor gravel and trace cobbles), underlain by very stiff colluvium (clayey SILT with trace gravel and cobbles). Both soil types are of low plasticity and were observed to be moist in condition. The recent cuts have been formed in both colluvium and uncontrolled fill soils. Some side-cast fill was noted on the downslope side of the new track. This fill appears to overlie older existing uncontrolled fill blanketing the relatively steep slope. Pre-earthworks LiDAR data suggests the slope was approximately 25° in this area, while now the slope averages 28-30°, with local maximum gradients of 35° across from the recent landslide discussed below. Based on this geometry, the depth of this fill (or fill + recent landslide debris) at its deepest point is approximately 0.5 m, averaging 0.3 m deep. Notably, the fill appears to have remained in place despite the recent storm event.

A landslide has occurred near the highest point of the cut slope, resulting in inundation onto the new track. The landslide debris has been mostly removed, though there is some residual material on the downslope shoulder of the track, which has created locally steeper track margins across from the landslide. The landslide measures approximately 5.5 m in width and is up to approximately 4 m in height. From our discussions on site, we understand the landslide occurred during the large storm event which recently affected Dunedin on 3-4 October 2024.

Discussion and Recommendations

The landslide has occurred as a result of soil saturation caused by runoff from the upslope catchment area. Soil instability would have been exacerbated by the steep gradient of the earthworks cut in this area, and the existing steep gradient of the historical uncontrolled fill.

To promote long-term slope stability, we recommend the entire cut slope on the subject property from just past the first flax bush at its southern extents adjacent to Annie Street road reserve to the northern margin of the site adjacent Bradley Road is regraded to a more stable batter. Very stiff colluvium should be reformed to a maximum gradient of 1.5:1 (horizontal to vertical), while the overlying uncontrolled fill should be reformed to 2:1 (horizontal to vertical). Re-battering these slopes will substantially reduce the old track width in some locations, depending on fill depth and slope geometry. Alternatively, these slopes could be retained to provide physical support. Any retaining wall proposed should be designed by a chartered professional engineer.

Additionally, the recent side-cast fill and any remaining landslide debris should be removed from the track margins, and no further side-cast fill should be placed on

the track margins. All soils removed during the re-contouring process should be disposed of elsewhere, ideally on a subhorizontal area, or on ground sloping less than 10° which has been stripped of topsoil prior to fill placement. Topsoil should be kept segregated from the underlying soils and re-spread on top of any newly placed fill. Fill certification is generally not required in yard areas but ideally a compaction methodology should be specified to minimise future settlement and landslip risk in areas where fill is placed.

While it appears stormwater runoff is generally controlled and disposed of adequately on the site, care must be taken to ensure no water flows are directed to these slopes. The existing drains must be maintained and cleared of any debris on a regular basis.

GeoSolve are able to inspect the site during construction to assist the earthworks contractor with distinguishing the various soils present on site, and confirm the above recommendations are implemented, if required.

- [73] After peer-reviewing the geotechnical report, Stantec commented that the proposed re-battering works within 12 Annie Street will be acceptable as long as guidance from a Geotechnical Specialist is followed.
- [74] Geosolve Site Inspection Record Ref 240732 confirms that the completed remediation earthworks were completed according to the recommendation of the Geotechnical report. The Site Inspection Record is contained in Appendix 5 of this report.
- [75] Accordingly, I consider that the effect on the stability of land, buildings, and structures will be acceptable.

Effects on visual amenity, & Effects on amenity of surrounding properties (2GP rule 8A.7.2.1.a-b)

- [76] Council's landscape architect has visited the subject site and provided comments on the remediation earthworks before they had been completed. An extract is shown below:

From a visual amenity perspective, the primary effects of the proposed works will be related to the re-battering of the cut face. As I understand it, following the proposed earthworks, this batter will have a gradient of 1h:1v from its base to near the top of the slope, where it will flatten to a 2h:1v slope. The applicant intends to re-plant this flatter, upper part of the slope once the earthworks are complete (the existing flax will be removed).

It is noted that this cut batter will exceed the standard for small-scale earthworks (max change in finished ground level – 1.5m (Rule 8A.5.1.3)) by a relatively small amount (0.2-0.3m). In addition, it is noted that the existing batter face is an existing feature that does not have a notable adverse effect on the visual amenity of the surrounding area. As such, impacts of the proposed works on the visual amenity of the surrounding area will be relatively low.

Nearby dwellings are located well below the level of the proposed earthworks and are predominantly oriented to the northeast or southeast (away from the site of the proposed works). Further, there is considerable, well-established vegetation between these dwellings and the works, which provides visual screening. For these reasons, it is considered that the proposed earthworks will not be highly prominent from these dwellings and effects of the earthworks on existing visual amenity values will likely be low. From more distant locations, such as from Pūrākaunui, tall vegetation surrounding the site will screen views of the earthworks.

As an advice note, it is recommended that the proposed planting at the top of the batter slope consists of locally appropriate native species.

- [77] I partially agree with this assessment. The completed remediation earthworks were contained within the subject site and were designed to improve the land stability situation. As mentioned previously, Mr Napier intends to restrict access to 12 Annie Street, and thereby also restricting use of the portion of the access way that lies within 12 Annie Street. The effects of the earthworks experienced by neighbouring property owners and residents will be the effects as experienced from outside of the subject site. I consider it appropriate, however, to impose a condition that the battered slopes should be grassed in order to improve visual amenity in the medium term.
- [78] I expect that there would have been noise effects associated with the completed remediation earthworks, and possibly a discharge of dust. An advice note has been included in the decision document, instructing the applicant to manage the disturbed ground to prevent dust or sediment escaping from the property boundary. 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).
- [79] For the sake of clarity, I reiterate here that the road boundary fencing and locked gates that Mr Napier plans to erect is a permitted activity pursuant to 2GP rule 15.3.4.4 subject to the fence being no higher than 2m and maintaining visual permeability for 50% of the length of the boundary measured at a height of 1.4m above ground level. However, the said fence and locked gate form part of the wider proposal, and can be assessed as such. Caselaw supports the holistic assessment of the effects of a proposal, including both permitted activities and those that require resource consent. Under RMA section 95E(2), Council has discretion to disregard an adverse effect of an activity if a rule of a national environmental standard permits an activity with that effect, but is not required to do so.
- [80] In terms of impaired access to neighbouring properties, as mentioned in the Notification section above, I consider that the earthworks and erecting a gate at the road boundaries would result in a minor negative effect on the amenity of the surrounding properties. The decision to notify the affected neighbours was therefore justified.
- [81] However, declining this application on the basis of a permitted activity would be neither practical or logical. The permitted activity of erecting a fence forms part of the overall activity contained within this application, but if the application is declined, it would still be the land owners prerogative to erect a compliant fence in the near future as a stand-alone activity in any case. It follows on from there that, due to the absence of a right of way easement over the subject site, the question of access over 12 Annie Street remains a civil matter.
- [82] In summary, I consider that the effects on visual amenity and the effects on amenity of surrounding properties caused by the remediation earthworks and planned fence will be minor but no more than minor. Grassing of the battered banks would mitigate visual amenity effects in the medium term and declining the application on the basis of a permitted fence, in spite of impaired access to neighbouring sites, would not be a logical outcome.

Effects on the safety and efficiency of the transport network (2GP rules 6.10.5.2.a and 6.10.5.6.a)

- [83] After reviewing the Geotechnical report, Stantec pointed out in an email dated 27 November 2024:

Geosolve's report recognizes that re-battering the fill slopes may well reduce the trafficable width of the road access, and that if the existing road width is to be kept, then retaining works will also be required to support the road surcharge, instead of the existing over-steep fill.

All this said, the revised site plan is going to do little to allay the local residents' concerns over the steepness of the access, given the friction resistance of the constructed surface, or the stability of the existing edges of fill that have been placed.

- [84] In terms of the track width being reduced, the geotechnical report only refers to the old access way. That accessway is due to be closed, as shown on the site plan, and the applicant has stated that he intends to establish plants in that area of the site. However, as can be deduced from the new site plan, the new access way will also be reduced by the re-battering work. I therefore asked the applicant to confirm the final width of the 'new' (the eastern) access way at the conclusion of the remediation works. Mr Napier confirmed via email on 3 December 2024 that the new access way will be 'around 3 metres wide and will be only available to Emergency services'.

- [85] The Council's Transportation Planner has considered the application and has provided the following comments (abbreviated):

[The] width of the new accessway where it transitions to a private driveway within the Annie Street Road Reserve has a formed width of approximately 10.0m at the present time and therefore does not comply with [Rule 6.6.3.3]. [This] is considered to be more of a technical non-compliance in this instance on the basis that the accessway does not front onto a formed road, enables practical use of the private accessway within the site and is unlikely to result in any noticeable concerns. Therefore, the effects of this technical rule breach is considered to be less than minor.

...

[While] the old and new vehicle accessway through 12 Annie Street and within unformed Legal Road previously provided physical access to three additional properties addressed as 17 Bradley Road and 13 and 15 Annie Street, this appears to have been via an informal vehicle access arrangement. The new vehicle accessway within 12 Annie Street has been constructed with an unsealed surface comprising of metalled material and other crushed building material and therefore technically does not comply with [rule 6.6.3.6.b].

It is acknowledged that while the owners of 13 and 15 Annie Street have raised concerns about the new accessway being unsuitable for their intended usage, this is matter best considered between the applicant and those landowners.

...

While the gradient of the first 5.0m of the new accessway has not been measured by Transport or the applicant, given the steep nature of the new accessway, conservatively it is considered unlikely that this requirement has been complied with.

However, it should be acknowledged that the original long existing private accessway both within Road Reserve and within the site is also a relatively steep

formation that also likely does not comply with this requirement and is also consistent with the relatively steep topography of the surrounding area.

The purpose of this requirement is more generally to ensure that vehicles using the accessway are not bottoming out or scraping and damaging the road carriageway or vehicles as well as ensuring that mud, stone, gravel, and other material is unlikely to be carried onto the road. It also ensures that vehicles have a level platform to wait on before crossing any footpath/berm and onto the road from a site. However, this concern is less relevant in this instance given that the accessway within the site transitions onto a privately formed accessway within Road Reserve which then transitions onto the Council sealed and maintained road carriageway within Bradley Road.

As noted already above, on the basis that the driveway slopes down away from the formed section of Bradley Road the potential for loose material being trafficked out onto the formed road due to the proposed gradient of the accessway is considered to be low. It also appears that there are no sharp/steep changes in gradient within the new accessway and transitions appear to be provided and therefore it is considered that the new accessway likely complies with Rule 6.6.3.7.a within the site and therefore the potential for vehicles to bottom out while transitioning between the access and the formed road is also considered to be low. On that basis the effects of this rule breach is considered to be less than minor.

For the avoidance of any doubt, the applicant should note that the Council regards the old and new vehicle access [within the road reserve] to be a private access on a legal road, and will not assume any responsibility for its maintenance.

Once these works are completed the applicant has advised that the new accessway will be fenced/gated and will only be available for access by emergency vehicles (the proposed fencing/gating is understood to be a permitted activity). Whilst the old accessway has up until the recent earthworks provided vehicle access to 17 Bradley Road and 13 and 15 Annie Street it appears that there is no legal mechanism to provide physical access to these properties over the subject site. As noted, it is understood that the proposed fencing/gating works can be carried out as a permitted activity and in any case does not form part of this proposal. It is therefore considered that this is a civil matter between neighbouring landowners that should be resolved outside of the resource consenting process.

- [86] The Transportation Planner concluded that the effects of the proposed development on the transportation network would be acceptable.
- [87] I accept the Transportation Planner's conclusion. In doing so, it is appropriate to elaborate on 2GP Objective 6.2.4, which seeks ensure that vehicle accesses are limited in number and width, in order to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on:
- pedestrian and cyclist safety and ease of movement; and
 - the safety and efficiency of the multi-modal transport network (Policy 6.2.4.4).
- [88] The general assessment guidance in 2GP Rule 6.10.5.2.a.iii states:

In assessing effects on pedestrian safety with ease of movement, Council will take into account potential changes in levels of pedestrian traffic on the frontage road. Estimates of future pedestrian traffic will take into account the location of the road in relation to the strategic pedestrian network, local centres and schools, and existing and permitted activities in the surrounding area that have the potential to increase pedestrian numbers with priority given to provisions for pedestrian safety and connectivity.

Potential circumstances that may support a consent application include:

iv. Volumes of pedestrian, cycle and vehicle traffic using the frontage road are low and likely to remain low.

v. Potential adverse effects from the additional vehicle crossing(s) are minimal due to the physical form of the road, for example the presence of a solid median to prevent right hand turns.

[89] The volume of pedestrians where the new (eastern) accessway connects with Annie Street is very low, considering only four properties have frontage to that part of Annie Street, one of which is undeveloped. The only vehicular traffic that connects with the unformed Annie Street road reserve is the few vehicle movements that come down from the accessway in the first place. Furthermore, the applicant has stated that the accessway will only be used for emergency services, which will virtually eliminate vehicular movements within that part of Annie Street.

[90] Due to the steep local topography and the informal formation of the Annie Street road reserve, pedestrians already find it challenging to walk in the vicinity. The width of the vehicle crossing/vehicle access being ten meters rather than 6 meters does not exacerbate the conditions.

[91] Further, in terms of steepness, I note that while the new accessway most likely breaches the steepness requirement in the first five meters from the Bradley Road boundary, the steepest section of the re-aligned access way is in fact situated within the road reserve (which is out of scope). From contour information on TL Survey Services plan dated Oct 2022 the planning consents team calculated the gradient of the new access in road reserve as in the order of 1 in 4 (1 vertical 4 horizontal). With respect to the property owned by Mr Napier at 12 Annie Street the old access had a maximum gradient of about 1 in 8 while the new access has a gradient approaching 1 in 4 but only over a distance of about 10m and flattening slightly towards the intersection with Annie Street. DCC Transportation may wish to confirm these calculations. Nevertheless there is still a steep, tight, descending left hand curve from the new access over Mr Napier's property onto Annie Street. As mentioned above, the sections of Bradley Road and Annie Street that bound the subject site are unsealed and not officially formed. Any negative effects on the safety and efficiency of the transport network due to the steepness of the private access way would be less than minor.

[92] Overall, based on the above assessment, I consider that the effects on the safety and efficiency of the transport network will be acceptable.

Effects on health and safety (in terms of proximity of earthworks to network utilities), and Effects on efficient and effective operation of network utilities (rule 5.7.4.2)

[93] As explained above, the previously completed earthworks breached the 2GP performance standard for setback from network utilities. Since submitting the application, the applicant has obtained approval from the network utilities, and the telecommunications facility has been moved. I can therefore not have regard to any

effects from the earthworks on the owners of the affected network utilities. Accordingly, the effects on health and safety and the effects on efficient and effective operation of network utilities (in terms of earthworks proximity to network utilities) are acceptable.

Effects Assessment Conclusion

- [94] After considering the likely effects of the completed earthworks, I consider that the effect on land stability has been mitigated by the remediation work already completed. Retrospective resource consents may have conditions that specify necessary improvements, modifications, or other steps necessary to remedy or mitigate adverse environmental effects. The proposed condition mentioned above is considered to be adequate to prevent any ongoing effects on visual amenity effects to reach beyond the property boundaries. The recommended advice notes will remind the consent holder of their responsibility to prevent dust and sediments from causing a nuisance beyond the property boundaries.
- [95] The purpose of a retrospective consent is to legalise an activity that satisfies normal consent requirements, but that for some reason does not have the necessary consent. As discussed above, the boundary fence and gates that the applicant plans to erect in the future form part of the overall activity and the amenity of surrounding properties is considered to be affected to a minor degree. However, it is important to keep in mind that the fence is a permitted activity; it is the prerogative of a property owner to erect a compliant fence along their property boundary. Since no right of way easement exists over the subject site, the lack of access over 12 Annie Street will remain a civil matter. Granting of consent is therefore appropriate.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [96] 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.
- [97] 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))

- [98] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the District Plan 2006 and the 2GP were taken into account in assessing the application. The 2GP was made partially operative on 19 August 2024. No consideration of the objectives and policies of the District Plan 2006 is required, unless the proposal relates to the specific provisions and identified areas of the 2GP that remain subject to an appeal. In this instance, none of the appeals are relevant to this application.

The following objectives and policies of the 2GP were considered to be relevant to this application:

Transportation Section

Objective/Policy	Commentary
Objective 6.2.4	The surfacing and gradient of the new

Parking areas, loading areas and vehicle accesses are designed and located to: a. provide for the safe and efficient operation of both the parking or loading area and the transport network; and b. facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.	accessway are in breach of 2GP performance standards. While the original driveway was not sealed, its gradient was gentler and the lack of hard surfacing was not recorded as an issue. The surface of the new accessway is also not sealed, which could lead to reduced traction on steep slopes. However, the intended future use of the new accessway is for low speed and low volume residential traffic, and neither of the ends of the accessway terminate in an officially formed and sealed road. The new driveway could therefore be considered inconsistent with, but not contrary to, Policy 6.2.4.2.a.
Policy 6.2.4.2 Require driveways to be designed to ensure that: a. the surfacing and gradient of the driveway allows it to be used safely and efficiently; b. mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths; c. the width of the driveway is sufficient to allow the type and number of vehicles (including emergency vehicles), likely to be using it to do so safely and efficiently; and d. sufficient distance is provided between shared driveways and dwellings.	The minimum formed width required by 2GP Rule 6.6.3.9.a.i.3 is 3m. The new driveway achieves compliance with that rule by having a formed width of 3m. I note that the New Zealand Building Code Acceptable Solution C/AS1 requires that buildings be provided with certain driveway dimensions for Fire Service access (e.g., a minimum 4m wide vehicular access is required to be provided to a hard standing within 20 metres of any inlets). However, that regulation sits outside of the reaches of the RMA. The role of rules in a district plan is to give effect to the plan's objectives and policies. Therefore, regardless of the more stringent requirements stipulated by the New Zealand Building Code, I consider the new driveway consistent with 2GP Policy 6.2.4.2.c.
Policy 6.2.4.4 Require vehicle accesses to be limited in number and width, in order to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on: a. pedestrian and cyclist safety and ease of movement; and b. the safety and efficiency of the multi-modal transport network.	In terms of the width of the new vehicle access created for the new driveway: the access is too wide to comply with the maximum width stipulated by Rule 6.6.3.3. However, the road onto which the access way connects is an unformed road and the volume of cyclist and pedestrian traffic is very low. As a result, the non-compliance is purely a technical matter and any resultant negative environmental effects are negligible. The activity is therefore not contrary to Policy 6.2.4.4.

Earthworks Section

Objective/Policy	Commentary
Objective 8A.2.1 Earthworks necessary for permitted or approved land use and development are	The original earthworks affected the stability of the land within the subject site, as demonstrated by a minor land slip that

enabled, while avoiding, or adequately mitigating, any adverse effects on: a. visual amenity and character; b. the stability of land, buildings, and structures; and surrounding properties.	occurred during an extreme weather event in October 2024. Visual amenity was affected as a natural consequence since the original cut faces were left in an untidy state. The amenity of surrounding properties was also affected by the original earthworks because the accessway that downstream neighbours were dependent on for access to their properties was made more difficult to navigate. Nonetheless, the subsequent remedial earthworks, which involved battering the original cut and fill faces, has rectified the situation and the site is now considered to be stable. Initial concerns about changes to drainage patterns have also been put to rest. Subject to the site being grassed as recommended, and subject to compliance with 2GP rules pertaining to dust and sediment effects, the application will not be contrary to the relevant 2GP objectives and policies for Section 8A (Earthworks).
Policy 8A.2.1.1 Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, adverse effects on the stability of land, buildings, and structures by: a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b. using a batter gradient that will be stable over time.	
Policy 8A.2.1.2 Require earthworks and any associated retaining structures, to be designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area, including from: a. sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems; and b. dust nuisance on the amenity of surrounding sites.	
Policy 8A.2.1.3 Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where the following effects will be avoided or, if avoidance is not practicable, adequately mitigated: a. adverse effects on visual amenity and character; b. adverse effects on the amenity of surrounding properties, including from changes to drainage patterns; and c. adverse effects on the stability of land, buildings, and structures.	

Overall Objectives and Policies Assessment

- [99] Having regard to the relevant objectives and policies individually, the above assessment indicates that the application is consistent with the relevant provisions.
- [100] Certain aspects of the original earthworks that were undertaken before this application was submitted to Council were inconsistent with the relevant objectives and policies of the 2GP. However, the remediation works that were subsequently completed in January

2025 will have mitigated the adverse effects on the stability of land, buildings, and structures, the effects on visual amenity and the amenity of surrounding properties to the extent that the works can now be considered as consistent with the objectives and policies listed above. As explained in the Assessment of Effects section above, the erection of a boundary fence where no right of way easement exists is a permitted activity, and therefore it would be beyond Council's jurisdiction under the RMA to impose any conditions to hinder that activity. Negotiations between neighbours and the applicant in terms of land tenure and easements remains a civil matter.

- [101] Having regard at the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with those provisions.

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

- [102] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements.

- [103] The Otago Regional Policy Statement 2019 (RPS) was made fully operative from 4 March 2024. It is considered that the provisions of the RPS does not have any direct relevance to the proposal.

DECISION MAKING FRAMEWORK

Part 2 Matters

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

Section 104

- [105] 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 minor, and can be adequately avoided, remedied, or mitigated provided the recommended condition of consent is adhered to.
- [106] 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.
- [107] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to the 2GP.
- [108] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. It is considered that there are no provisions of the RPS that have any direct relevance to the proposal.

Other Matters

- [109] Having regard to section 104(1)(c) of the Resource Management Act 1991, no other matters are considered relevant.

CONCLUSION

[110] Having regard to the above assessment, I recommend that the application be granted subject to the appropriate conditions.

RECOMMENDATION

[111] Having regard to the above assessment, I recommend that the application be granted subject to appropriate conditions as set out in Appendix 6.

REASONS FOR RECOMMENDATION

[112] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse environmental effects of the proposed activity, as far as Council's discretion is applicable, can be adequately mitigated and will not be significant to the wider environment.

[113] The proposal is considered to be consistent with the key relevant objectives and policies of the 2GP.

[114] The proposal is considered to be consistent with the objectives and policies of the RPS.

[115] Overall, I consider that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991, which is to promote the sustainable management of natural and physical resources.

Report prepared by:

Report checked by:



Elisabeth Boyle
Planner

Phil Marshall
Senior Planner

25 March 2025
Date

25 March 2025
Date

APPENDIX 1:

THE APPLICATION

APPENDIX 2:

The revised site plan showing reduced area of works.

APPENDIX 3:

**Photographs taken during the site visit on 9
February 2023.**

APPENDIX 4:

Submissions

APPENDIX 5:
Site Inspection Record

APPENDIX 6:

Recommended conditions and advice notes