

CENTRAL OTAGO DISTRICT COUNCIL
OPERATIVE CENTRAL OTAGO DISTRICT PLAN
REPORT OF PLANNING CONSULTANT

APPLICANT: Mt Difficulty Wines Limited, 73 Felton Road, Bannockburn (RC180273)

The above has made application for a land use consent on the land legally described as Lot 1 Deposited Plan 417047 and comprising an area of 2.2270 hectares (ha) more or less. The land is owned by the applicant.

The applicant seeks to undertake a retail activity – Winery (on and off licences and sale of food ancillary to the consumption of wine on the site), a commercial activity (function centre) and earthworks exceeding more than 3000m³ in volume and covering more than 2000m² in area.

The applicant holds a number of consents to undertake a range of activities on the site. If granted, the applicant offers to surrender all other consents and operate under this single consent.

DISTRICT PLAN ZONING:

The site is Rural Resource Area as shown on Map 44 of the Operative Central Otago District Plan (the District Plan).

Retail activity is defined in Section 18 of the district plan as *“the sale, offering for sale, or exposure for sale of goods to the public”*. Rule 4.7.4(iv) provides for the sale of wine for consumption both on and off the site, the sale of goods that bear the vineyard label and the sale of food ancillary to the consumption of wine on the site as a discretionary activity, provided it is ancillary to the growing of grapes or production of wine on the site.

The sale and consumption of wine is restricted to that associated with the Mt Difficulty brand and the sale of food is considered to be ancillary to this. As such, that component of the proposal is determined to fall within that anticipated by Rule 4.7.4(iv). However, the application also seeks to host functions which is a departure from that provided for by Rule 4.7.4(iv).

Rule 4.7.5(iv) states retail activity except for as provided by Rule 4.7.2(iii) and 4.7.4(iv) (rural selling place and winery related sales) is to be assessed as a **non-complying** activity.

Rule 4.7.6D requires that no dwelling breach the skyline. In this instance the 30m² extension of the upper portion of the restaurant will continue an existing skyline breach authorised by RC001066.

Rule 4.7.6J limits earthworks to 3000m³ and/or a 2000m² area. Where this volume and area are exceeded, then this is assessed as a discretionary activity pursuant to Rule 4.7.4(i).

THE RESOURCE MANAGEMENT (NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH) REGULATIONS 2011 (NES):

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES) came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Earthworks are one of the five activities covered under the NES.

The applicant notes that the land which is subject to this application has been used historically for sluicing associated with gold mining (Category E7 on the HAIL). A Preliminary Site Investigation and Detailed Site Investigation have not been undertaken for the site and the application is assessed as a Discretionary Activity pursuant to Clause 11 of the NES.

OTHER LEGISLATION:

It is noted that liquor licensing approvals are assessed under the Sale and Supply of Alcohol Act 2012 and nothing under this consent confers any right to sell alcohol.

OVERALL ACTIVITY STATUS

Case law directs that applications should be assessed under the most restrictive activity status unless the matters are able to be discretely and independently assessed. In this instance, I consider that the effects of all the activities occurring on the site are inter-linked and it is appropriate to assess the application as a **non-complying** activity overall.

NOTIFICATION:

A decision to publicly notify the application, pursuant to Section 95A of the Act, was made on 31 July 2018. Notification occurred on 6 September 2018 and the submission period closed on 4 October 2018.

One submission was received on the application from Fire and Emergency New Zealand (FENZ). FENZ's submission seeks to ensure that any building firefighting supply is to be provided in accordance with New Zealand Fire Service Water Supplies Code of Practice SNZ PAS 4509:2008.

No other submissions were received in respect of this application.

STATUS OF THIS REPORT:

The attention of the applicant is drawn to the fact that the purpose of this report is to bring to the attention of the Hearings Panel all relevant factual information or issues which should be considered in deliberating on the proposal. It must be emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearings Panel, and it should not be assumed that the Hearings Panel will reach the same conclusion or decision having considered all the evidence.

COMMENT ON PROPOSAL:

Section 104 and 104D

I note that the proposed land use activity has the status as a non-complying activity in the Rural Resource Area of the Operative Central Otago District Plan. As discussed above, it is appropriate that the Hearings Panel consider the proposal as an application for a land use consent under the District Plan as a non-complying activity pursuant to sections 104, and 104D of the Resource Management Act 1991.

In terms of section 104D (as amended by the Resource Management Amendment Act 2003) the Hearings Panel may grant resource consent for a non-complying activity only if it is satisfied that either: -

- (a) *The adverse effects of the activity on the environment will be minor;*
or
- (b) *The application is for an activity that will not be contrary to the objectives and policies of the relevant plan or relevant proposed plan or both the relevant plan and the relevant proposed plan.*

Section 104(1) requires that subject to Part 2, the Hearings Panel shall have regard to any actual or potential effects of allowing the activity; any relevant provisions of the plan or proposed plan; and any relevant national or regional planning document.

Section 108

Section 108 empowers the Hearings Panel to impose conditions on a resource consent should it be of a mind to grant consent. Recent changes to the RMA, took effect on 18th of October 2017. Of these changes, the underlying principles introduced by Section 108AA are relevant when considering conditions to be imposed any resource consent. These principles set out the criteria the consent authorities must consider when imposing conditions.

Conditions can only be imposed on a consent if at least one of the following is satisfied:

- *the applicant agrees to the condition; or*
- *the condition is directly connected to an adverse effect of the activity on the environment; or*
- *the condition is directly connected to an applicable district rule, regional rule, or national environmental standard; or*
- *the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.*

In this context, an 'applicable rule' means a rule that is the reason, or one of the reasons that a resource consent is required for the activity. (source: MfE Fact Sheet 10).

The Hearings Panel will need to be mindful of S108AA when imposing conditions on the consent, if it is of a mind to grant.

Part 2 of the RMA

The Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC38[2014]1 NZLR 593 (King Salmon) approach used in RJ Davidson Family Trust v Marlborough District Council [2016] EnvC 81 followed the Court's reasoning that in most cases it is not necessary to refer back to Part 2 when determining an application for resource consent. The rationale for this approach was because planning instruments are prepared as a cascade with district plans at the bottom of the cascade. Therefore, unless the district plan, under which the resource consent is being considered, was deemed to be incomplete, invalid or uncertain, is assumed to give effect to the higher order planning documents including regional policy statements, national policy statements and Part 2 of the Act, and no further consideration of those planning instruments was required.

However, the recent Court of Appeal decision on Davidson (*R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316*) confirms that resource consents are expressly subject to Part 2 and that Part 2 is to be considered as well as the other considerations set out in S104.

DESCRIPTION OF PROPOSAL

The proposal is accurately described in the application and details the nature of the activity proposed.

The application seeks to increase the floor area of the existing restaurant/tasting building located on the upper level of the site and located at 73 Felton Road. The lower part of the site is occupied by a consented winery and wine storage and recently relocated administration building.

This application seeks to increase the floor area of the building on the upper level from 248m² to 571m². The increase in floor level will occur over two levels, with the existing upper level increasing by 30m² and a new 293m² area created by excavating into the terrace below. The restaurant, new kitchen, storage and office area will be contained within the lower level and the upper level (currently split between the tasting room and restaurant) will be dedicated solely to the tasting room, although the kitchen will be retained in this area to service tasting menus. Earthworks associated with the excavation for the lower level building are expected to comprise a volume of 1500m³ (cut to waste) over a 450m² area, although the design works for this part of the proposal are yet to be finalised.

The formation of the increased carparking areas will result in earthworks in excess of 3,300m³ which will be cut to waste. Batters up to 6.0m in height will be required and some gabion retaining will be

required. Overall, the combined total of earthworks on the single site will have a combined area of approximately 2500m² and a volume of 4800m³. The cartage of the fill from the site is expected to generate truck movements on Felton Road during the development of the site.

The existing upper level building has resource consent to breach the skyline (RC001066). The 30m² addition proposed for this building will continue this skyline breach. The existing building may rely on RC001066 and subsequent variations, but the new portion of the building will be assessed as a new skyline breach.

The extended area of the restaurant will seat an additional 80 people but the application offers to limit the total number of patrons on the site (restaurant and tasting room combined) to 90 patrons and 10 staff at any given time. The facility seeks to host evening functions after 5.30pm and, as such, the applicant seeks to increase the existing hours of operation for the restaurant to 10 am to 5.30pm seven days per week, and from 10am to 11.30pm, on 150 days per year.

Site Description

The subject site is a large site containing a winery and office complex and restaurant, cellar door, and tasting bar. Access to the site is from Felton Road. The activities on the site are established by a long and complex consent history. The application provides a description of the surrounding area which is adopted for the purposes of this report.

PLANNING HISTORY

The site has a long consent history which is well traversed on page 3 and 4 of the application and is not repeated here for the matters of expediency. The applicant seeks to surrender all existing consents and rely on this consent, should the Hearings Panel be of a mind to grant consent.

ASSESSMENT OF EFFECTS OF PROPOSAL

Permitted Baseline and Existing Environment

Under section 104(2) of the RMA, an adverse effect of the activity on the environment may be disregarded if the plan permits an activity with that effect. That is, an application can be assessed by comparing it to the existing environment and development that could take place on the site as of right, without a resource consent, but excluding development that is fanciful. In this instance, the retail of food and beverages and the hosting of functions are not permitted as of right within the Rural Resource Area. However, up to 3000m³ of earthworks is provided for and an area of disturbance of up to 2000m². It is the effects of the earthworks over and above this volume and area which are considered critical to this report.

It is noted that much of the activity on the site is currently consented. It is these consented activities which comprise the existing environment. It is the effects of the activities over and above those which are consented which are considered critical for this assessment. It is noted that the applicant has offered to surrender all relevant land use consents if consent is granted. If the hearings panel is of a mind to grant consent, all relevant conditions shall be carried down onto the new consent.

Effects on Landscape Values

The proposal seeks to establish a lower level restaurant area on the subject site which sits below the existing restaurant and carpark area. An upper level carpark will be created and the existing carpark area increased. The existing upper level restaurant area will be increased in area by 30m².

The proposed extension to the upper restaurant building seeks to continue an existing authorised skyline breach. While skyline breaches are generally recognised as having adverse visual effects, in this instance, a skyline breach is currently authorised for this building and comprises the existing environment. Given the context within which the 30m² addition will be viewed, it is anticipated that once constructed, the skyline breach will be integrated with the existing breach so to be visually unremarkable. Overall, the effect of extending the skyline breach is expected to be no more than minor.

The earthworks on the site are considered to be substantial. However, the car parking area where the majority of the earthworks are to be located is situated behind the existing building and

somewhat screened from view. Large 750mm high gabion baskets will retain the hillside behind the carparking area. These earthworks are considered necessary to create adequate carparking space on the site. When viewed from the road, the works are expected to present as part of the overall winery/ restaurant/ office complex.

The second area of the earthworks will excavate the space below the existing restaurant building so to create a 293m² lower level dining space. While the construction works are expected to have adverse visual effects, these are expected to be temporary in nature and are of limited duration. Once the excavation has occurred and the lower level building is in situ, along with proposed landscaping, the visual amenity of the site will be restored.

In respect of landscaping, the applicant proposes to introduce a range of native plantings. The roof of the new lower level building will be a green roof to assist with visual integration with the site. A landscaping plan and design philosophy by NOTT, dated 29 May 2018 has been submitted with the application. The assessment in the document from NOTT notes that the design response seeks *“to maintain the existing restaurant facility and outdoor terrace experience, the views, sun, outlook etc with the new extension dug into the hillside to the north – resulting in a new building with a visually minimal impact on the existing environment.”* To this end, colours and materials have been selected to reflect the backdrop of exposed soils and clays. Roughcast concrete will be used for cladding and a green roof and planting scheme will compliment the existing tussocks and grasses on the site.

The rational and intended design outcomes by NOTT are adopted for the purposes of this report and it is expected that by following the design philosophy, the proposed works will assimilate well into the existing environment such that the effects on the landscape will be no more than minor.

Effects on Amenity Values

The restaurant seeks to increase the seating capacity of the restaurant but offers to limit the number of patrons to 90, at any given time. The patrons will be served by up to 10 staff. It is noted that there are no conditions on the earlier consents capping seating numbers in the restaurant but the 2003 application indicated a maximum of four tables and a maximum of 16 diners and a combined number of patrons (restaurant and tasting room) of 50 people per day. However, in actuality, the restaurant is currently operating a capacity of 35 restaurant patrons indoors and additional seating outdoor for 35 people, plus tasting room patrons. Although it is recognised that the outdoor space is weather dependant and, as such, the maximum of 70 diners at any given time is unlikely to be realised during the winter months.

The restaurant and tasting room is currently authorised to operate between 10am – 5.30 pm, seven days per week with extended hours authorised for a 9pm closing time on 50 days per year and 11pm on 30 days per year providing that the café is not open until 11pm for more than three consecutive days. The applicant seeks to increase the hours of operation for the café restaurant to 10 am to 5.30pm seven days per week, and 10am to 11.30pm, on 150 days per year. There is no mention in the application of the consecutive nature of these days, but it is noted that this increase in hours means the site has the potential to be open every weekend night which is not unusual for typical restaurant activities. The applicant offers a condition that no amplified sound systems will be permitted outdoors after 5.30pm. The application was publicly notified and neighbours were made aware of the increase in hours of operation. No submissions were received from surrounding neighbours.

Sustainable Land Use and Reverse Sensitivity

It is noted that the restaurant component of the proposal is currently occurring on the site and this proposal seeks to extend this existing use. The land where the lower level terrace and upper carpark are located are currently not used for productive purposes. The nature of the activity on the site is well established and is not expected to result in any reverse sensitivity effects. Overall, it is determined that the proposal will not adversely affect the sustainable use of the subject or surrounding land.

Earthworks and NES

The geotechnical report by Geosolve Limited, dated February 2018, was submitted with the application. The geotechnical investigation involved geological logging of the existing slope exposures, site inspection to identify landscaping to aid slope stability and review of the Geosolve database for historic data on local geography. The subsoil conditions were not able to be guaranteed by the report and confirmatory investigations were recommended at a later stage but no evidence of current slope instability was identified. The report also noted that the earthworks proposals had not been fully developed. The report noted the presence of the commercial building downslope and the existing restaurant up slope. It is noted that these buildings are owned by the applicant. It is accepted that the earthworks will be setback from any boundary such that stability to neighbouring land is not expected to be an issue. The report recommended a number of conditions which have been carried down as conditions of consent.

The volume of earthworks will result in a significant amount of material being cut to waste. This material will not be stockpiled on the site and will need to be removed by truck. This requirement will result in a number of truck movements to and from the site during the construction phase of the project. It is considered that phase will have temporary effects and will be of relatively short duration. It will be up to any contractor to manage any adverse traffic effects once beyond the site and within the public roading system.

The applicant notes that there have been a number of Preliminary Site Investigations (PSI) for other previously sluiced sites in the Bannockburn area, which have found no chemical extraction methods associated with lode mining, and the risk to human health was found to be low. There is a risk in relying on PSIs which do not relate directly to the site. However, in this instance the risk is expected to be restricted to the construction phase of the works and any risk to construction workers is expected to be able to managed through Contaminated Site Management Plan (CSMP) which is recommended as a condition of consent. Furthermore, the applicant will be required to manage dust and sediment control during the earthworks phase of the project to prevent the escape of any potentially contaminated material from the subject site and this will need to be addressed within the CSMP. It is also noted that, as the contamination status of the material to be removed from the site is unknown, this material will need to be disposed of to a Council approved facility.

Overall, subject to compliance with the recommended conditions of consent, the effects of the earthworks are expected to be no more than minor.

Traffic Effects

Traffic generation for the site has been calculated in the application as a peak demand of 40 vehicle movements per hour. Access to the site will remain unchanged and vehicles accessing the upper terrace will continue to travel through the site using the current loop driveway. Current carparking on the site will increase to 56 carparks which exceeds the minimum requirement calculation given in the application of 35 carparks to serve the 142 dining seats. The additional carparking will help ensure that all parking is contained within the subject site and will not result in off-site carparking demands. The expected traffic movements associated with the earthworks have been discussed above.

The proposal was referred to the Council's Consultant Engineer who did not make comment on the formation of access or parking for the site.

Overall, it is expected that the current access formation and the increased carpark area are adequate to address any increased traffic generation and parking demand created by the proposal.

Provision of Services

It is noted that the application generated one submission from FENZ who sought a condition which requires that:

"Prior to the construction of any building firefighting supply is to be provided in accordance with New Zealand Fire Service Water Supplies Code of Practice SNZ

PAS 4509:2008. The Code of Practice provides a range of options for the provision of fire-fighting and therefore written agreement with the New Zealand Fire Service on the firefighting water supply to be provided to meet the Code of Practice shall be provided to Council”.

The applicant has confirmed with FENZ that this will be offered as a condition of consent and FENZ have accepted this and do not wish to be heard in support of its submission.

The application also includes advice from Dr Matt Savage of Apex Environmental, dated 4 July 2018, confirming that the existing membrane bioreactor wastewater treatment system will maintain its current level of performance with the addition of up to 70 more restaurant seats and is actually expected to perform better with the increase in nitrogen rich wastewater which will supplement the nitrogen deficient winery wastewater. Any increase in toilet stalls required will be addressed at the time of building consent. It is noted that the site is currently serviced by the Bannockburn Water Supply Scheme. Overall, the proposal is able to be adequately serviced.

Development Contributions

No additional development contributions have been identified for this expansion.

Summary of Effects on the Environment

It is noted that no adverse effects on the public or neighbours were raised during the submission process. Subject to recommended conditions of consent, the proposal will have less than minor adverse effects on the environment in terms of landscape, amenity, earthworks, servicing and access. It will not reduce the sustainable use of the land nor will it introduce any additional reverse sensitivity effects. A full suite of recommended conditions of consent are annexed as Annexure 1 of this report.

OBJECTIVES AND POLICIES FRAMEWORK

Central Otago District Plan

Objectives and policies are to be considered in a suite, with relevant policies being read in the context of the specific objectives they are seeking to achieve. In *Blueskin Energy Limited v Dunedin City Council [2017] NZEnvC 150*, the Court held at Paragraph [36] that:

“Careful attention must be paid to the way objectives and policies are expressed. The meaning of words and phrases are to be interpreted and applied in their context; this is especially important when considering the integrated management of natural and physical resources.”

The relevant objectives and policies of the Rural Resource Area of the district plan include:

- 4.3.1 Objective - Needs of the District’s People and Communities**
To recognise that communities need to provide for their social, economic and cultural wellbeing, and for their health and safety at the same time as ensuring environmental quality is maintained and enhanced.

- 4.3.3 Objective - Landscape and Amenity Values**
To maintain and where practicable enhance rural amenity values created by the open space, landscape, natural character and built environment values of the District’s rural environment, and to maintain the open natural character of the hills and ranges.

- 4.4.2 Policy - Landscape and Amenity Values**
To manage the effects of land use activities and subdivision to ensure that adverse effects on the open space, landscape, natural character and amenity values of the rural environment are avoided, remedied or mitigated through:

- (a) The design and location of structures and works, particularly in respect of the open natural character of hills and ranges, skylines, prominent places and natural features,
- (b) Development which is compatible with the surrounding environment including the amenity values of adjoining properties,
- (c) The ability to adequately dispose of effluent on site,
- (d) Controlling the generation of noise in back country areas,
- (e) The location of tree planting, particularly in respect of landscape values, natural features and ecological values,
- (f) Controlling the spread of wilding trees.
- (g) Encouraging the location and design of buildings to maintain the open natural character of hills and ranges without compromising the landscape and amenity values of prominent hillsides and terraces.

4.4.3 Policy Sustainable Management of Infrastructure

To ensure that the development of infrastructure in the rural environment promotes sustainable management by:

- (a) Requiring developers to contribute a fair and reasonable proportion of the costs involved, and
- (b) Maintaining and enhancing the safe and efficient operation of the infrastructure network (including roading), while avoiding, remedying or mitigating adverse effects.

4.4.8 Policy - Adverse Effects on the Amenity Values of Neighbouring Properties.

To ensure that the effects associated with some activities including (but not limited to):

- (a) Noise (including noise associated with traffic generation, night time operations), and vibration,
- (b) The generation of a high level of traffic, in particular heavy vehicles,
- (c) Glare, particularly from building finish,
- (d) A reduction in visual amenity due to excessive signage and the storage of goods or waste products on the site,
- (e) The generation of odour, dusts, wastes and hazardous substances, and
- (f) The use and/or storage of hazardous goods or substances

do not significantly adversely affect the amenity values and privacy of neighbouring properties or the safe and efficient operation of the roading network.

4.4.9 Policy - Effects of Rural Activities

To recognise that some rural activities, particularly those of a short duration or seasonal nature, often generate noise and other effects that can disturb neighbours by ensuring that new developments locating near such activities recognise and accept the prevailing environmental characteristics associated with production and other activities found in the Rural Resource Area.

In terms of Objective 4.3.1 which seeks to provide for the needs of the local community while protecting their health and safety, this is achieved by the implementation of the policies 4.4.1-4.4.16, and, in this instance, specifically by the policies identified above. Objective 4.3.3 seeks to manage the adverse effects of land-use on open space, landscape, natural character and amenity

values of the rural environment. Each of the policies identified above also seek to achieve Objective 4.4.3.

Taking into consideration the existing activities occurring on the site, that the current productive use of the land will remain unchanged, that the proposed expansion will provide for business growth with the area and that the proposal is not anticipated to give rise to unacceptable adverse effects in respect of landscape, amenity, transportation and provision of services, overall it is considered that the proposal is **consistent** with Policies 4.4.2 and 4.4.3.

No submissions were received regarding this proposal (with the exception of FENZ). Noise and traffic effects arising from extension of activities on the site are expected to be easily accommodated by the site and construction effects are expected to be temporary and of short duration, subject to conditions of consent. It is considered that the proposal is **consistent** with Policy 4.4.8. No reverse sensitivity effects have been identified and, as such, the proposal is considered **consistent** with Policy 4.4.9.

Considering Objectives 4.3.1 and 4.4.3 in light of the policy assessment above, It is considered that, overall, the proposal is found to be **consistent** with these objectives.

Operative and Proposed Regional Policy Statement for Otago

The Regional Policy Statement for Otago (RPS) became operative in 1998. The purpose of the RPS is to promote the sustainable management of natural and physical resources, by providing an overview of the resource management issues facing Otago and setting policies and methods to manage Otago's natural and physical resources. Of specific relevance to this proposal are the objectives and policies set out in Chapter 5: Land and Chapter 9: Built Environment and which are summarised below:

- **Objective 5.4.1 and Policy 5.5.3** which seek to promote the sustainable management of Otago's land resources by maintaining and enhancing Otago's land resource.
- **Objective 5.4.3 and Policy 5.5.6** which seek protect Otago's outstanding natural features and landscapes from inappropriate subdivision, use and development by recognising and providing for the protection of Otago's outstanding natural features and landscapes.
- **Objective 9.4.2 and Policies 9.5.2 and 9.5.3** which seek to promote the sustainable management of Otago's infrastructure and transport network by promoting and encouraging efficiency in the development and use of Otago's infrastructure and transport network.
- **Objective 9.4.3 and Policy 9.5.5** which seek to avoid, remedy or mitigate the adverse effects of Otago's built environment on Otago's natural and physical resources by maintaining and, where practicable, enhancing the quality of life for people and communities within Otago's built environment by, in part, managing the adverse effects of subdivision, land use and development on landscape values.

The assessment of effects undertaken above indicates that the proposal does not undermine the RPS and the proposal is not found to be contrary to the objectives and policies of the RPS.

The Proposed Regional Policy Statement for Otago (PRPS) was notified on 23 May 2015 and decisions were released on 1 October 2016. The PRPS is currently under appeal. The following assessment is undertaken against the PRPS incorporating Council decisions released on 1 October 2016. Specific to this proposal are:

- **Objective 5.3 and Policy 5.3.1** which seek to ensure sufficient land is managed and protected for economic production by managing activities in rural areas by, in part, restricting the establishment of activities in rural areas that may lead to reverse sensitivity effects.

No reverse sensitivity effects have been identified for this proposal and the productive capacity of the land remains unchanged. Overall, I consider the proposal will not reduce the amount of

economically productive land in the Otago region in any noticeable or meaningful way and the proposal is not inconsistent with the PRPS.

Part 2 of the RMA

The purpose of the RMA to promote the sustainable management of the natural and physical resources detailed below:

managing the use, development and protection of natural and physical resources in a way or at a rate which enables people and communities to provide for their social, economic and cultural well being and for their health and safety while:

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

The Court's approach, as discussed at paragraph [151] of the *King Salmon* decision, is supported in that Section 5 is not intended to be an operative provision, rather it sets out the RMA's overall objectives. As such, the application is assessed against the remaining provisions of Part 2.

It is considered that there are no matters of national importance as identified in Section 6 of the RMA which are relevant to this proposal. In respect of the other matters set out in Section 7, I consider the following matters are relevant:

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

It is considered that, given the immediate existing environment, the proposal will not undermine the matters set out in section 7(b). With regard to sections 7(c) and 7(f), the assessment of environmental effects informs that the amenity values, of the area will be maintained (recognising the existing consented activities occurring on the site) as will the quality of the surrounding environment. Overall, the proposal is considered to be consistent with Part 2 of the Act.

SECTION 104D

Section 104D of the Resource Management Act 1991 specifies that resource consent for a non-complying activity must not be granted unless the proposal can meet at least one of two limbs. The limbs of Section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan. It is considered that the proposal meets both limbs as any adverse effects arising from this proposed activity will be no more than minor, and the activity will not be contrary to the objectives and policies of the Central Otago District Plan. Therefore, the Hearings Panel can exercise its discretion under Section 104D to grant consent.

OFFSETTING OR COMPENSATION MEASURES

In accordance with Section 104(1)(ab) of the RMA, no need for consideration of offsetting or compensation measures has been identified.

OTHER MATTERS

Section 104(1)(c) of the Resource Management Act 1991 requires the Hearings Panel to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and plan integrity are considered relevant here. I recognise that in times gone by the "true exception" test was regularly applied by the Court to non-complying activities.

It is considered that the test is no longer compulsory as determined in *Mason Heights Property Trust v Auckland Council* [2011] NZEnvC 175, para [88]. However, *Mason Heights Property Trust v Auckland Council* does note that the test can assist in assessing whether issues of precedent are likely to arise and whether the proposal meets the objectives and policies of the Plan by an alternative method, especially where contrary to the objectives and policies of the relevant plan. This approach was supported *Cookson Road Character Preservation Society Inc v Rotorua District Council* [2013] NZEnvC 194.

In this instance, the proposal is not considered contrary to the objectives and policies of the District plan, RPS, PRPS or Part 2 and the environmental effects are considered less than minor and, as such, it is not considered necessary to apply the true exception test in this instance. The district plan identifies and seeks to maintain and protect the values of the Rural Resource Area. While under this proposal the extent of non-rural activities will increase on the site, the proposal will only introduce effects which are less than minor or which are localised to the immediate area. The issues raised within the FENZ submission can be adequately addressed via condition of consent.

Overall, it is considered that the proposal will not result in a change to the current productive use of the land from that which currently exists. Notwithstanding the need or not to apply the true exception test, I consider that, given the existing activities on the subject site, the limited opportunity for productive capacity on land within the area to be utilised by this proposal, it is considered that there are sufficient elements to set this proposal apart such that it is not expected to create an undesirable precedent or threaten the integrity of the district plan.

RECOMMENDATION

Having regard to the information available at the time of writing this report, prior to the Hearings Panel's consideration of application, it is recommended that the proposal be considered as an application for land use consent to a non-complying activity in terms of sections 104 and 104D of the Resource Management Act 1991.

For the reasons detailed in the body of this report, it is considered that, subject to conditions of consent, adverse effects on the environment will be acceptable to the degree that they are minor or less than minor and that granting consent will be not be contrary to the objectives and policies of the Operative District Plan and to the purpose and principles of the RMA.

In these circumstances, it is recommended that the Council **grant** consent to the application for proposal, subject to conditions imposed under section 108 of the RMA and annexed as Annexure 1 to this report.



Kirstyn Lindsay
Planning Consultant and Accredited RMA Commissioner
Southern Planning Solutions Limited

19 November 2018

ANNEXURE 1 – RECOMMENDED CONDITIONS OF CONSENT RC180273

1. *The proposal must be undertaken in general accordance with the information contained in the application for resource consent (RC180273) submitted by Mt Difficulty Wines Limited on 5 July 2018 and the plans attached as Appendix 1, except where modified or confirmed by the conditions below:*

Surrender of Consents

2. *Prior to the exercise of this consent, the consent holder shall surrender the following land use consents:*
 - a) *RC160209;*
 - b) *RC150279;*
 - c) *RC080422;*
 - d) *RC030137,*
 - e) *RC001066.*

Site Operation

3. *This consent authorises the operation of a winery/ wine storage/ off licence sales and administration activities on the lower level of the site and tasting/sales, restaurant and café facilities within the existing building on the upper level of the site, and the expansion of the restaurant, tasting room and café facilities as detailed in the application RC180373. The buildings are located as per the plans attached as Appendix 1.*
4. *No more than ninety (90) patrons shall be in the combined two-level restaurant, terrace seating, and tasting room areas at any given time.*
5. *The restaurant and tasting room may operate between 10am – 5.30 pm, seven days per week and between 10am to 11.30pm, for 150 days per year. A written record of the days where the restaurant and tasting room operate beyond 5.30pm shall be kept and produced to the Chief Executive, upon request.*
6. *Wine sold on site shall be limited to that marketed under the consent holders label or to other brands owned by the consent holder or other labels owned by shareholders of Mt Difficulty Wines Limited, and to overseas produced wines of the varieties grown by the consent holder or shareholders of Mt Difficulty Wines Limited.*
7. *Noise associated with all of the activities on the site shall not exceed the limits stated in Rule 4.7.6E of the Central Otago District Plan.*
8. *Carparking shall be provided as shown on the plans attached as Appendix 1 of this consent, and in addition, the number of existing carparks on the lower site shall be retained.*
9. *No amplified sound systems are permitted outdoors after 5.30pm.*
10. *Landscaping must be undertaken in accordance with the planting plan by Baxter Design attached as Appendix 1 of this report*

Building Design Controls

11. *The upper restaurant extension shall comprise an increase in floor area of 30m² and of the newly excavated and constructed lower restaurant shall have a maximum floor area of 293m².*
12. *The upper restaurant skyline breach is authorised by this consent and the upper restaurant extension shall be permitted to continue the existing skyline breach for the extent of the extended building area. The upper restaurant extension shall be coloured so as to integrate*

with the existing upper restaurant building, such that the new skyline breach is not visually obvious.

13. *The lower excavated restaurant shall be clad in roughcast concrete coloured from a colour palette comprising ochres and browns. The lower restaurant shall have a green roof, planted with tussocks and grasses.*
14. *The exterior walls of the barrel store building shall be constructed of coloured concrete wall panels in a medium shade of brown, with an exposed aggregate finish, and thereafter maintained accordingly. The roof of the barrel store building shall be constructed of coloursteel coloured Ironsand and thereafter maintained accordingly.*

Note: *The roof of the barrel store building is permitted to be planted in tussocks for temperature control and to mitigate visual effects.*

15. *The exterior of the winery /wine storage area on the lower level shall be finished in desert sand and shall be maintained accordingly. The exterior of the off licence sales building shall be finished in a combination of AC Panel and TPO Membrane finished in colours that match the existing barrel store building and cedar cladding and thereafter maintained accordingly.*
16. *The vintage cellar building shall have a maximum height of 11 metres. The roof of the vintage cellar building shall be constructed of coloursteel coloured Desert Sand with a rust coloured paint or alternatively coloured Ironsand and thereafter maintained accordingly.*
17. *Prior to the construction of any building, firefighting supply is to be provided in accordance with New Zealand Fire Service Water Supplies Code of Practice SNZ PAS 4509:2008. The Code of Practice provides a range of options for the provision of fire-fighting and therefore written agreement with the New Zealand Fire Service on the firefighting water supply to be provided to meet the Code of Practice shall be provided to the Chief Executive.*

Earthworks

18. *Before any construction works commence, the consent holder must:*
 - a) *Provide a letter to the Chief Executive advising who the suitably qualified and experienced professional is for the design and supervision of the earthworks, and*
 - b) *Provide notice to the Chief Executive of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.*
19. *Before any construction works commence, the consent holder must:*
 - a) *Demonstrate to the satisfaction of the Chief Executive either by way of Preliminary Site investigation or Detailed site investigation that the soil disturbance does not pose a risk to human health; or*
 - b) *Prepare a Contaminated Site Management Plan (CSMP) to the satisfaction of the Chief Executive. The CSMP must include, at a minimum, details of:*
 - i. *Sediment and dust controls to be used on site; including methods to be used to:*
 - c) *divert clean runoff away from disturbed ground;*
 - d) *control and contain stormwater run-off;*
 - e) *avoid sediment laden run-off from the site; and*
 - f) *protect existing drainage infrastructure sumps and drains from sediment run-off.*
 - ii. *Stop work procedures, in the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination,*
 - iii. *The approved facility where spoil material is to be disposed of,*
 - iv. *PPE gear to be used by construction workers on site,*
 - v. *How contaminated material is to be transported from the site.*

20. *Except where directed by the suitably qualified and experienced professional identified in Condition 18a) above, the earthworks shall be undertaken in accordance with the Geosolve Report dated February 2018 for the subject site.*
21. *The earthworks must be undertaken with the principles of industry best practice applied at all stages of site development including site stability, stormwater management, traffic management, along with dust and noise controls at the sites.*
22. *No soil disturbance or soil shifting, unloading, loading will take place if wind speed is higher than 14 metres per second if the soil is dry and prone to becoming airborne, unless a dust suppressant is applied.*
23. *All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site.*
24. *Surplus of unsuitable material is to be disposed of away from the site to a Council approved facility.*
25. *Should the consent holder cease, abandon, or stop work on site for a period longer than 6 weeks, the consent holder must first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions, and must thereafter maintain these measures for so long as necessary to prevent sediment discharge or dust emission from the site. All such measures must be of a type and to a standard which are to the satisfaction of the Executive Manager, Planning and Environment.*
26. *If, at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures that have been affected/damaged by contractor(s), consent holder, developer, person involved with earthworks or building works, and/or vehicles and machineries used in relation to earthworks and construction works, must be reinstated to the satisfaction of Council at the expense of the consent holder.*
27. *If the consent holder:*
 - (a) *discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:*
 - (i) *notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.*
 - (ii) *stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.*

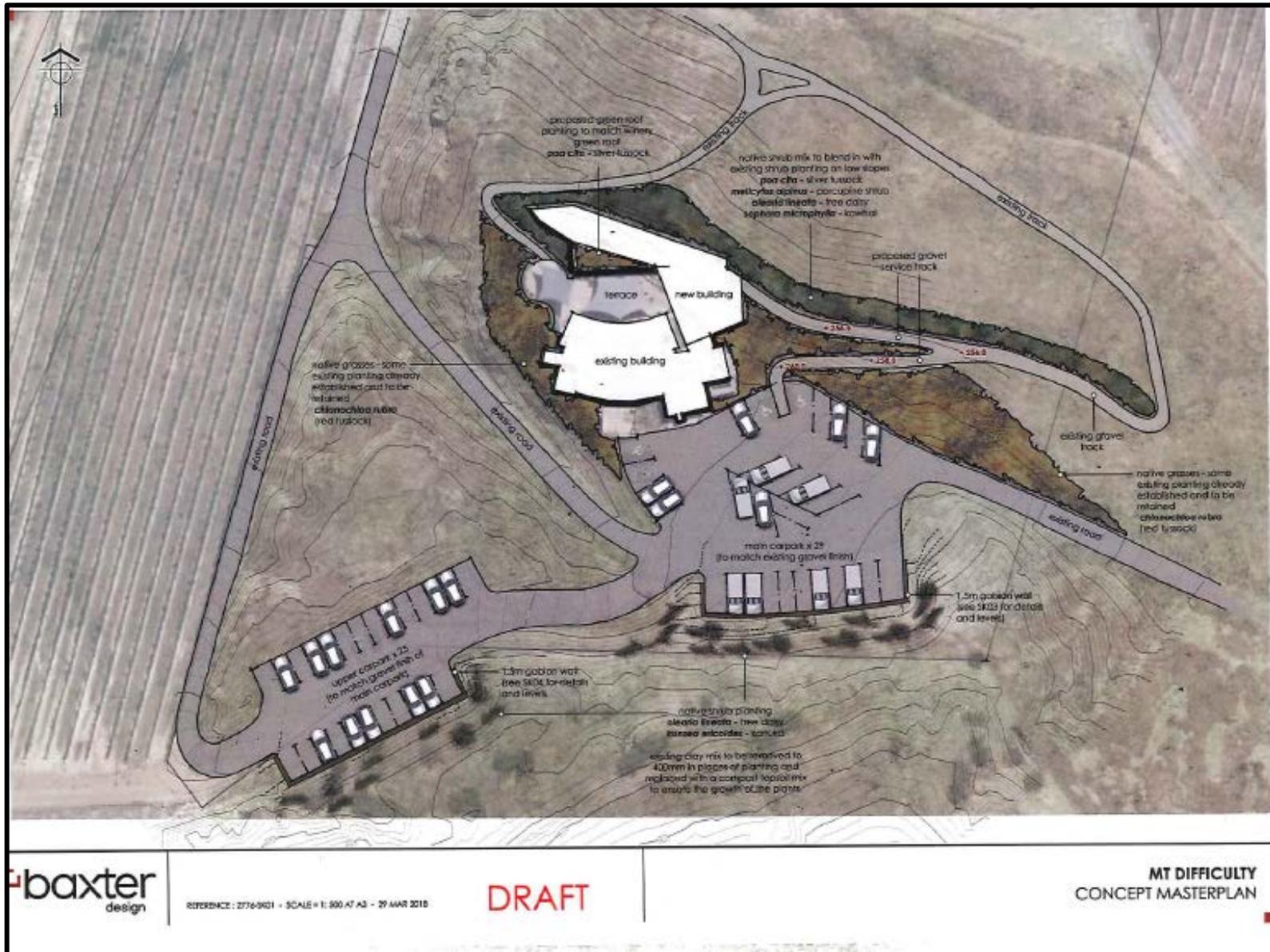
Any koiwi tangata discovered must be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

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

Site work must recommence following consultation with the Consent Authority.

- Notes:
1. No additional signage is approved by this consent.
 2. Liquor licensing approvals are granted under the Sale and Supply of Alcohol Act 2012 and nothing under this consent confers any right to sell alcohol.

APPENDIX 1 – RC180273 – APPROVED PLANS





PATERSONPITTSGROUP
 Surveying • Planning • Engineering
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 www.ppgroup.co.nz
 0800 PPGROUP

CROMWELL BRANCH
 30 The Mall,
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 Cromwell 3342,
 T 03 445 1126
 E cromwell@ppgroup.co.nz

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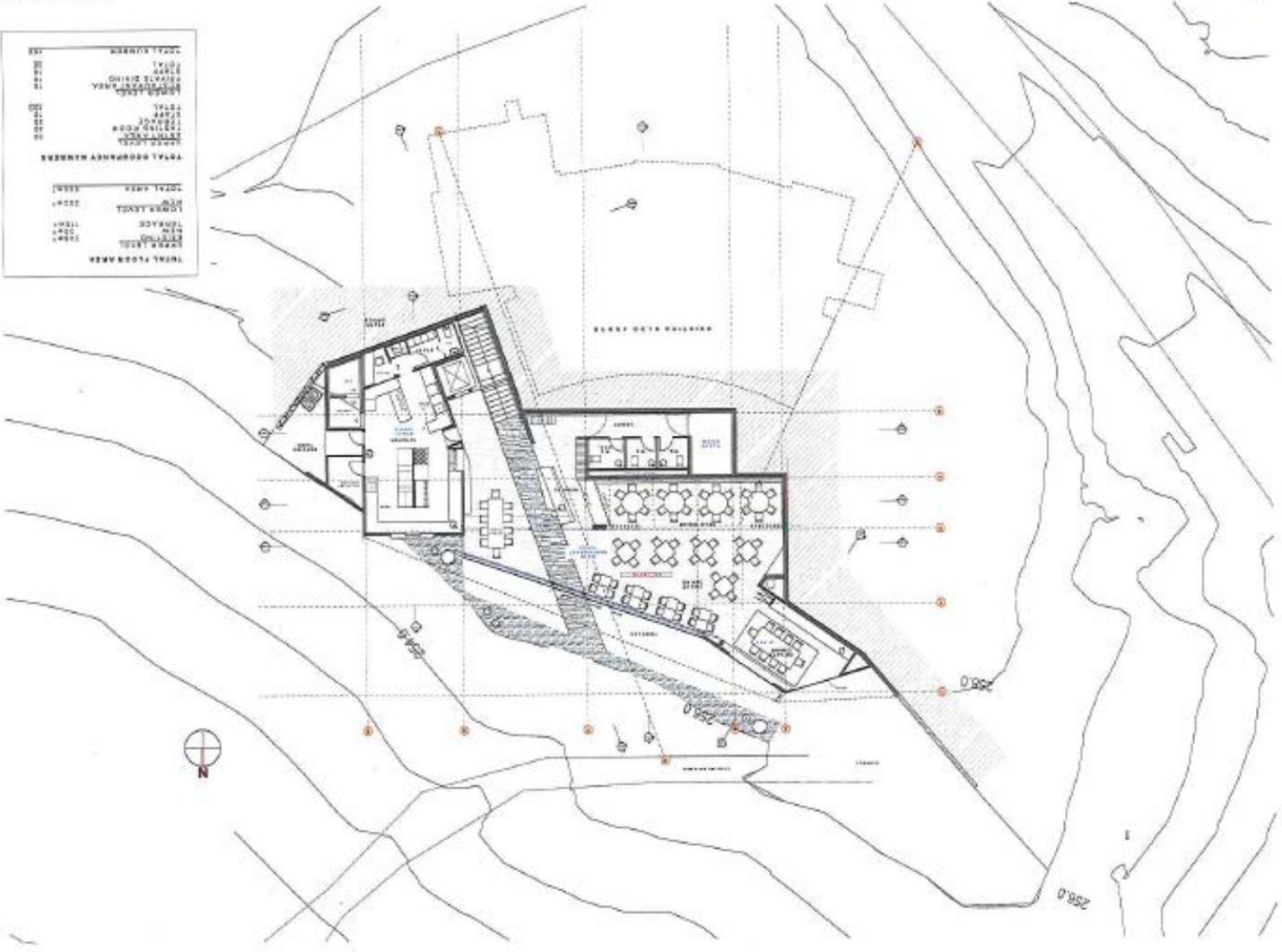
Client:
Mt Difficulty Wines Ltd

Project Name:
**Topo Plan
 Lot 1 & 2 DP 417047**

Drawn by:	DP	Sheet Size:	A3	Scale:	1:750
Checked by:	MD			INDUSTRY SCALE	
Drawn by:	MD				
Author:	MD	Revision:	A	Date:	07/02/2017
File No:	C2371_TOPO	Sheet No:	1		

LOWER SITE PLAN
1:100

TOTAL FLOOR AREA	
NEW	1244
EXIST.	1244
TOTAL	2488
TOTAL AREA (SQM)	
NEW	2224
EXIST.	2224
TOTAL	4448
TOTAL PROGRAM NUMBERS	
NEW	12
EXIST.	12
TOTAL	24
TOTAL NUMBER	
OFFICE	12
RETAIL	12
RESTAURANT	1
TOTAL	25

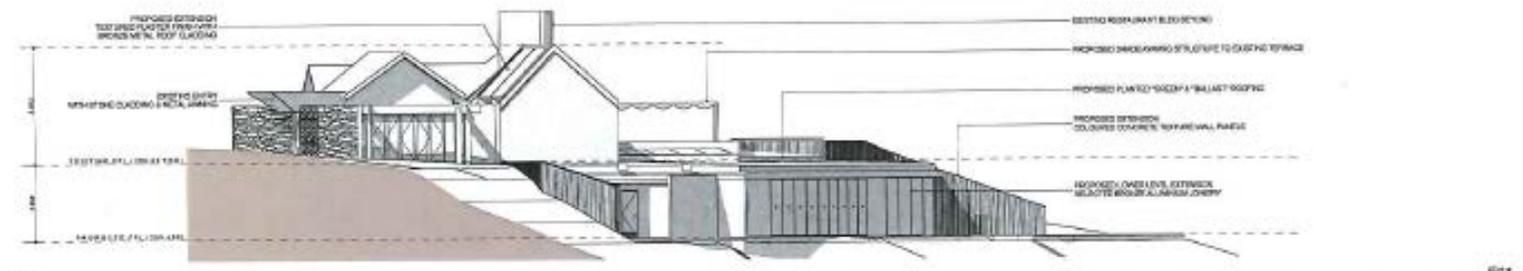


MT DIFFICULTY - RESTAURANT & TASTING
MADROCKSVEN

DATE: 1/20/18
 DRAWN BY: ADZ
 PROJECT: MT DIFFICULTY - RESTAURANT & TASTING
 SHEET: 4 OF 12

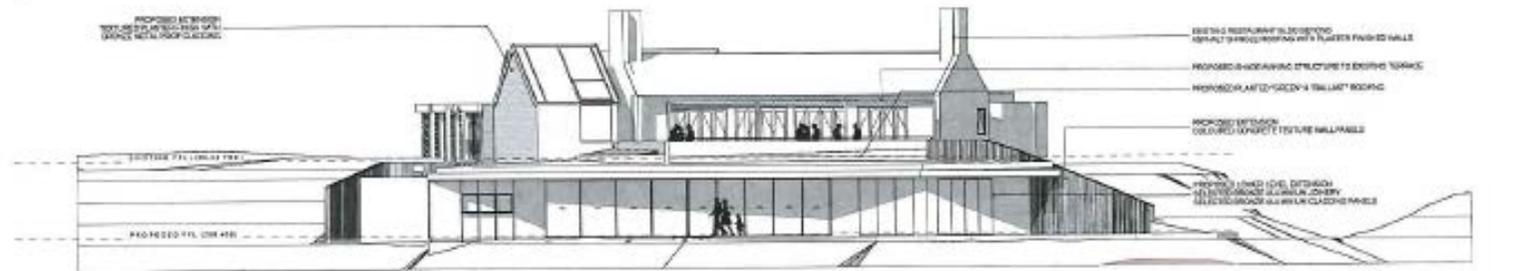
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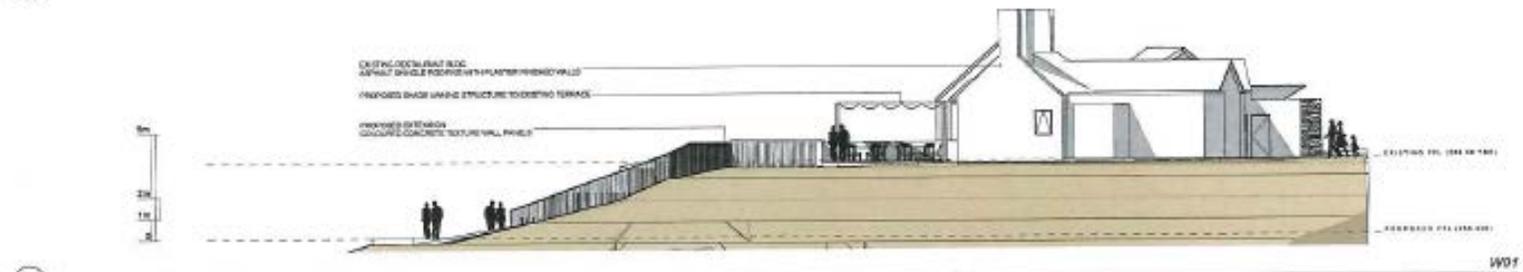
EAST

ED1
1:100



NORTH

ND1
1:100



WEST

WD1
1:100



COLOURED CONCRETE TEXTURE WALL FINISHES

PLASTERED FINISHES

METAL CLADDING LRV < 20%

NOTT
 ARCHITECTS
 100 RIVERVIEW DRIVE
 WILSON PROMENADE
 WILSON PROMENADE
 WILSON PROMENADE

MT DIFFICULTY - RESTAURANT & TASTER
 SAUVIGNON

PROJECT LOCATION
 PROJECT NO.
 DATE: 11/08/2018
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: AS SHOWN

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VIEW FROM NORTH EAST



VIEW FROM NORTHWEST

NOTT

ARCHITECTURE
INTERIORS
LANDSCAPE

MT. DIFFICULTY - RESTAURANT & TASTING
DANFORSBURG

18 VIEWS

DATE: 2005/10



NO. 1 ROAD, 10/2007
NEW YORK, NY

