

21 May 2018

McNay Somes Partnership
C/- Southern Planning Solutions Ltd
29 Rosebery Street
Dunedin 9011

Attention: Kirstyn Lindsay

Dear Kirstyn

RESOURCE CONSENT APPLICATION

LUC-2017-561
5 CLARK STREET
DUNEDIN

The above application for resource consent for residential activity at 5 Clark Street, Dunedin, to establish a seven bedroom apartment in the vacant ground floor of the existing building and reconfigure the existing first floor apartments, was processed on a Limited Notified basis in accordance with Section 95 and 95B of the Resource Management Act 1991. The Consent Hearings Committee, comprising Councillor David Benson-Pope (Chairperson), Councillor Mike Lord and Commissioner Ros Day-Cleavin, heard and considered the application at a hearing on 30 April 2018.

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

A site visit was undertaken by the Hearings Committee on 3 May 2018, and the Committee **granted** consent following the site visit. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant, McNay Somes Partnership, was represented by Kirstyn Lindsay (Consultant Planner)

Council staff attending were:

- Campbell Thomson (Advisor to Committee),
- Melissa Shipman (Processing Planner),
- Wendy Collard (Governance Support Officer)
- Tanya Morrison (Environmental Health Officer)
- Grant Fisher (Transport Planner/Engineer).

The submitter, T & J Family Trust, attended the hearing and were represented by:

- Conrad Anderson (Consultant Planner)
- Jeff Herkt (Trustee)
- Tania Herkt (Trustee)

Procedural Issues

Ms Lindsay advised that she had raised a procedural matter in her pre-circulated evidence which had since been resolved as a result of the evidence received from the submitter. Accordingly, she requested that the Committee disregard paragraph 7 of her evidence.

There were no other procedural issues raised by parties in attendance.

Principal Issues of Contention

The principal issues of contention addressed at the hearing were:

- Effects on amenity of the submitter's property from intensification of residential use of the subject building and associated site development.
- Reverse sensitivity issues in relation to development of adjacent land for industrial activity.
- Loss of land/floor space for industrial activity
- Car parking demand and consequential effects

Summary of Evidence

Introduction from Processing Planner

Ms Melissa Shipman spoke to a summary of her report, giving an overview of the proposal before commenting on the notification of the application and the submission received. She advised that overall the proposal had been assessed as a non complying activity as the proposal is for residential activity in an Industrial Zone. Ms Shipman confirmed that the proposal is to establish a seven bedroom apartment on the vacant ground floor of the existing building and reconfigure the existing consented residential apartments on the first floor to create one additional habitable room. She noted the provision for on-site parking via an existing driveway from Clark Street under the first floor at the northern end of the building frontage, and the external alterations proposed.

Ms Shipman noted that it had been established that the property was a HAIL site due to the previous industrial use, which included a funeral home and joinery workshop (including aluminium joinery). However, she advised that it had been determined there is minimal risk to human health, as a result of a site investigation and expert assessment. She commented on the matters addressed in her recommended Conditions 5 and 8 in the report, and suggested that a revised wording merging these two conditions might be a better outcome.

Ms Shipman affirmed her assessment that the proposal passed the "limbs" of the Section 104D gateway test. She advised that she considered the proposal to be a true exception, that would not affect the integrity of the District Plan in terms of either the Industrial Zoning, or the density anticipated in Residential Zones of the Plan. Ms Shipman confirmed her recommendation that consent be granted subject to conditions, and responded to questions from the Committee. These questions related to the density of residential activity and consequential effects, amenity issues, the permitted baseline, statutory considerations, and the recommended conditions.

The key issue explored through questions was the density of the residential activity proposed. Ms Shipman was asked about the total number of bedrooms proposed on site, and potential parking demand from occupation of the units. She indicated that the parking provision was considered appropriate because of the proximity to the central city. She noted that the residential activity is an out of zone activity, and the key matter was the footprint of the existing building. The residential activity is already established on the first floor with the additional room created within the existing footprint. The new unit in the ground floor is similarly utilising the footprint of the existing building. A comparison to other residential developments in the inner city was noted, with regard to concerns about amenity effects. Ms Shipman advised of the technical advice received and noted that in relation to noise the Environmental Health Officer was satisfied that effects could be mitigated by conditions dealing with acoustic requirements. Ms Morrison clarified the advice of Environmental Health

and indicated that larger residential developments within the inner city do not necessarily raise concerns about amenity.

Ms Shipman clarified her assessment of the permitted baseline, noting the considerations in terms of bulk and location of buildings, and the usage of the site. She noted that an industrial building could occupy 100% of the site, and that industrial activities could be undertaken as of right within the site. There had been a history of industrial use of the ground floor already.

In regard to amenity effects Ms Shipman confirmed that the key matters had been addressed and managed appropriately, but considered that there is scope for consideration with the design of the first floor outdoor deck. Modification of this feature could reduce the impact on the neighbour from development at the rear of the property. Mr Thomson advised that as the proposal is a non-complying activity, conditions relating to the deck design could be justified if there is a clear link between this addition and effects on the amenity of the neighbouring property.

Ms Shipman noted that there was some uncertainty about the second gateway test of section 104D as to whether an application must not be contrary to the policy provisions of one or both plans. In her opinion, this test was passed on the basis of being not contrary to one of the plans. However, she confirmed that as the proposal met the first limb of Section 104D (the environmental effects are no more than minor), she advised that this statutory provision was satisfied regardless of how the second test was interpreted.

In regard to permitted industrial activity on the site, Ms Shipman advised that there was no limitation on the operating hours of this land use, as the industrial zone rules set no rules for operating hours of permitted activities. She clarified the purpose of her recommended conditions 5 and 8 and indicated that the rebuild of the lower floor was an opportunity to achieve acoustic insulation between the floors, while the site and building remained in one ownership. She noted that if the site was unit titled later then it could be an issue trying to achieve this mitigation. Ms Shipman advised that her suggested merge of 5 and 8 did not remove the requirement of acoustic insulation.

The Applicant's Presentation

Ms Kirstyn Lindsay spoke to the application on behalf of the McNay Somes Partnership and her pre-circulated statement of evidence. In her presentation she spoke as an expert planning witness for the applicant. She outlined the details of the proposal and background to the application and addressed the planning issues set out in her evidence. At the outset of her presentation she confirmed that the total number of habitable rooms resulting from the proposal was 15. This comprised the 7 bedrooms proposed in the ground floor unit and 8 bedrooms (one additional) on the first floor. She also commented on the requirement for an assessment of the site in relation to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.

Ms Lindsay drew attention to a number of matters set out in her evidence. She noted that as the proposal is a non complying activity, and no external additions are proposed (apart from the decks) the bulk and location rules for the Industrial 1 zone do not provide much assistance to the assessment of the proposal. She noted that the baseline and existing environment for assessment included the three consented residential units on the site, as well as the submitter's residence at 9 Clark Street. It also included the existing building, vehicle access and parking. She considered that the existing footprint of the building, the current occupation of the first floor, and permitted use of the ground floor, should all be applied when assessing the effects of the proposal.

In regard to the required acoustic insulation, Ms Lindsay noted that conditions relating to mitigation of external noise were offered by the applicant before notification of the application. The proposed conditions were acceptable to the Environmental Health officer as the only noise expert involved in the process for this application. She considered that the

potential noise issues between the residential units within the building are not reverse sensitivity effects, and concern matters that should be addressed by controls under the Building Act, and not the RMA.

Ms Lindsay contended that there was no evidence that the loss of the ground floor space to residential activity would have any impact on the affordability of industrial land as suggested in the submission. She noted the processing planner had not identified this as a concern. Ms Lindsay observed that there is already residential activity in the area which could constrain an industrial activity, and that there would be very limited industrial uses suitable for the subject site, given this residential activity, the limited parking on site and the time restricted parking on the street.

With regard to concerns raised in the submission about heritage and urban design, Ms Lindsay noted that there is no heritage classification applying to the site, and contended the area has very little amenity value. She considered that there was no justifiable reason for the proposed condition 10 recommended in the Sec42A report, and noted that imposition of this condition was not supported by the expert urban design evidence.

Ms Lindsay commented on the reference in the Sec42A assessment to the Residential 4 density provisions, and noted that equal consideration could be given to the Central Activity zone provisions, which permit residential activity with no limitation on density and no requirement for car parking. It was noted that both zones adjoin the subject site, with the Central Activity zone applying to the land across Clark Street.

Ms Lindsay noted that the courtyard area is currently able to be used by the tenants and access is not restricted to the front door. She considered that the effects from the use of the decks to 9 Clark Street are less than minor, but the applicant was willing to install screening at the end of the balcony to address neighbour concerns. She considered that it was more appropriate that the provision for water saving devices to be installed be included in a consent as an advice note, rather than as a condition of consent.

In regard to the statutory considerations, Ms Lindsay was of the opinion that the objectives and policies of each of the District Plans should be considered as a suite. She commented on the direction of the Environment Court given in the decision on Blueskin Energy Ltd vs DCC in relation to this. She concluded that the effects of the proposal on the existing environment are not more than minor and that the proposal is not contrary to the objectives and policies of the District Plans. Taking into account the relevant regional policy statements and plans she concurred with Ms Shipman.

The Committee asked Ms Lindsay a number of questions regarding the details of the proposal and the assessment in her evidence. These questions canvassed many of the matters raised with Ms Shipman.

Ms Lindsay clarified her comment about there being technically no density breach. She reiterated that as a non complying activity there is no density standard for residential activity on the site. She considered the provisions for the Residential 4 and Central Activity zones could equally be used for comparison, but in any case they do not apply to the subject land.

In regard to car parking, Ms Lindsay contended that four on-site car parks were acceptable, bearing in mind there is no cap on the number of habitable rooms in residential units in the adjacent residential zone, and the fact the site is very close to town and public transport. In respect to the likelihood residents may own a vehicle, she noted the prevalence of apartments within the city that do not have or need parking on site. She indicated the applicant would have no issue with a condition that parking on-site not be sublet.

Ms Lindsay responded to other questions about heat pump noise and water supply requirements. With respect to the latter, she acknowledged the cost of installing water saving devices may be low, but noted that this wasn't recommended by the technical officers as a condition but only as an advice note. She also noted that the condition 14 in the Sec42A report states a water meter is required and the applicant is not challenging this.

In response to questions, Ms Lindsay clarified the differences between her analysis of the objectives and policies of the District Plans and that of Ms Shipman, and emphasised the importance of assessing the policies as a suite. She advised that she was not concerned with any precedent effects, noting that there is consented residential activity on site, next door, across the road and in MacLaggan Street.

Ms Lindsay was unable to confirm the type of tenants anticipated, but suggested that it may be professional cliental. She did consider that a site in View St referred to was comparable, as it was in a residential zone, and there was no acoustic insulation at that site. She suggested the potential for noise disturbance would be no worse than could occur on any residential property and would be mitigated by the requirement for acoustic insulation and mechanical ventilation. She did not consider that the provision for doors for direct access off the street was necessary, and observed that with a permitted industrial activity on the site, the business could be operating 24 hours a day. She commented on the configuration of the ground floor development compared with the units upstairs and noted that any change to the downstairs unit into multiple units would alter parking and other requirements.

Comparing the development to that for other residential activity in the Central Activity zone, Ms Lindsay observed that there are a great number of apartments in the Vogel St precinct, including a number of former warehouse buildings converted to apartments. She noted that many of these do not have any outdoor amenity areas on-site or car parking. She also cited other locations in the City where residential units have a similar configuration.

Evidence of Submitters

Mr Conrad Anderson introduced his clients **Jeff and Tania Herkt** and confirmed that they resided at 9 Clark Street. He noted that mechanical ventilation was not specifically required in the conditions. He also observed that the existing residential activity at this location was very historic, with the resource consent for this activity at 9 and 5 Clark Street being retrospective.

Mr Herkt commented that the house at 9 Clark Street dated back to 1896 and was originally the home of Hugh Gourley, a former mayor. The building has been refurbished and when they purchased the property they understood that it was in an industrial zone. He noted that the ground floor of 5 Clark Street had been occupied by commercial activity until last year, and has since been empty. He had seen no evidence of any attempt by the owners to fill it with an appropriate activity. Mr Herkt advised that the three existing apartments have been occupied by professional couples and privacy issues are minimal at present. He noted that he had never seen anyone going upstairs from the carpark, as from his observation they tend to use the entrances to the building from Clark Street. He considered that with the commercial activity no one tends to congregate outside. Mr Herkt considered that the proposal would change the situation from one of a low density residential activity with low impact to that of a high density residential activity and high impact. He noted the decks as proposed will go to their boundary and considered that the occupants of the units would look into their property.

Mr Anderson spoke to his pre-circulated evidence, which addressed the existing use of the building at 5 Clark Street, the history of the site and house at 9 Clark Street, and effects on Mr & Mrs Herkt. He noted that the dwelling at 9 Clark was a purpose built residence, whereas the building at 5 Clark Street was a mixed use building, used predominantly for industrial activity. He considered that the proposal would adversely affect the amenity of 9 Clark Street, and would also represent a loss of industrial land. Mr Anderson noted that the ground floor space (as currently configured) at 5 Clark Street is able to be used for activities permitted in the zone, with the owners unlikely to allow a permitted activity of a type that would be in conflict with upstairs residential activity.

Mr Anderson noted that the loss of entrances from the street would mean everyone must enter the residential units from the rear. He advised there was no stairway down from the existing walkway to ground level, which means that the rear yard is not currently an area for

residents to congregate. He contended that the proposal would result in all residential activity at 5 Clark Street becoming oriented to the north and the west, rather than towards the street. He advised that the increased deck areas were a major concern to the submitters due to lack of privacy of their rear yard, and that the proposed residential activity will cause an increase in conflict with the existing industrial activity. Mr Anderson concluded that the proposal would cause an undesirable precedent, and that the application should be declined.

Mr Anderson responded to questions from the Committee with regard to his evidence. In addition to the matters noted above, he commented that the existing deck for the upstairs units is effectively a service lane to the laundry. He considered that the proposal would result in all residential activity being at the back of the building. He confirmed his opinion that the key impact on the submitters was noise and privacy, and that the proposal would result in a loss of industrial land. It was unclear on what basis he identified the loss of industrial land as a key environmental effect of the proposal, but he nonetheless considered this a relevant matter under Section 104(1)(c) of the Act. He confirmed his opinion this loss of land would be a precedent for other applications.

In response to questions Mr Herkt commented on the existing access to the building at 5 Clark Street, and noted that all pedestrian access to the residential units as a result of the proposal would be via the deck areas. He advised that they can clearly see the next door property from their backyard. He indicated that while screening on the boundary would be acceptable, it did not resolve concerns with the deck areas. He observed that the existing car park area was not an easy area to park in and considered that turning would be a problem.

In regard to further questions about the Plan provisions, Mr Anderson commented that the general thrust is that it is an industrial zone area and the 2GP proposes to keep this. He noted that policy provisions of the 2GP promote that any activity that is not permitted must be beneficial, and he contended that the proposal does not sit comfortably with the industrial zoning. Mr Anderson referred to the boundary of the site to 61 MacLaggan St, and noted that the Industrial zone does not require the buildings to be built to the boundary. He advised that the existing building 61 MacLaggan Street has some issues, and if that site was redeveloped for a permitted activity then the boundary wall could be removed.

Evidence of Technical Officers

Mr Grant Fisher responded to questions regarding his memorandum on Transportation matters, in particular in regards to car parking. He confirmed that in his opinion the parking shortfall was acceptable for the proposal. He advised that current accepted research on traffic generation and parking (NZTA Research Report 453: Traffic and parking related to Land Use) generally aligns with the District Plan requirements for on-site parking.

His assessment had been that kerbside parking is time restricted which means that residents will not be able to park close by, and may be less likely to have vehicles. If Clark St was unlimited parking, then he considered that it would be more likely be used for commuter parking. He considered that the parking proposed was consistent with other developments in the central city where applicants are advised that the city will not provide parking.

Mr Herkt advised that the bottom end of Clark St has unlimited parking. Following an adjournment, Mr Fisher referred to the GIS information on parking restrictions within Clark Street, and confirmed that most of the parking in Clark Street had no time restrictions. He commented that the Transport team are undertaking an extensive parking review over the next 12 to 18 months, but his recommendation would be to assess the application as it is today. He indicated that the availability of unrestricted kerb side parking heightened concerns, but did not change his overall assessment of the proposal.

Processing Planner's Review of Recommendation

Ms Shipman reviewed her recommendation in light of the evidence presented at the hearing, maintaining her recommendation that consent be granted. She maintained her view that the environmental effects are no more than minor. In respect to car parking, she noted Mr

Fisher's advice concerning the time restricted parking and his overall assessment. She noted that redevelopment of 61 MacLaggan St for industrial activity is possible, but noted that if the existing boundary wall is removed it may be replaced with a new wall to maintain the existing building bulk and development rights. She advised that the conditions on noise seek to maximise the indoor living amenity within the residential units, and the screening proposed is only to stop people looking directly into the dwelling at 9 Clark Street. She emphasised that the permitted baseline allows for noise of industrial activity on site.

Ms Shipman maintained her view that the proposal is inconsistent with the operative plan and contrary to the proposed plan, with respect to objectives and policies for the zone. However, she noted that the character of the area has changed as there is a mix of commercial/industrial/residential activities, with the residential use at 9 Clark Street being long established. She did not consider the proposal will set a precedent given the existing first floor residential units at 5 Clark Street.

Ms Shipman clarified the requirements of conditions 9 and 15 in response to a question. She indicated that condition 9 required a new plan to define the screening of the new deck, which may involve a set back from the boundary, or a fire rated screen. She noted that the Committee has discretion to retain condition 15 or make the provision of water saving devices an advice note only. Mr Anderson queried the scope of Condition 9 which was limited to screening only of the upper deck.

Applicant's Right of Reply

Ms Lindsay responded to issues raised in the submission and presented in evidence at the hearing, and addressed a number of recommended conditions of consent in the Sec42A report. She observed that the submission raised concern about reverse sensitivity, but the submission was principally about noise, privacy, and amenity for the residence at 9 Clark Street. Ms Lindsay considered that these matters had been dealt with. She noted that the upstairs residential activity was already consented and the proposed deck on this level serves this activity, and there was no current restriction on activity in the courtyard. She advised that the proposal was not creating a boarding house and it was not planned for the development to be unit titled.

In regard to services to the site, Ms Lindsay noted that the expert advice had identified no concerns. She noted that the Urban Designer supported the plans for the building alterations as submitted, and that no need for additional car parking had been identified by Mr Fisher. She also noted his assessment was not changed by the correction to the parking restrictions. She contended that there was no evidence to support the reduction in room numbers sought by Mr Anderson.

Ms Lindsay advised that she continued to have concerns about the recommended conditions set out in the Sec42A report. While she indicated that she accepted a requirement of non-leasing of the car parks, she did not see how the requirement of condition 3 to allocate car parks related to traffic effects. She contended that the requirements of conditions 10 and 15 were not supported by the evidence of the technical experts. In regard to the noise mitigation requirements she noted that the owner of 61 MacLaggan Street had been given the opportunity to submit but did not, and as this site was vacant testing of the existing noise environment may not prove anything. She questioned the need for the noise insulation required between units within the site, advising that this was not a matter of reverse sensitivity. She contended that this matter was something that should be addressed through the Building Act rather than a condition of resource consent, as it did not relate to the effects of noise external to the development.

She emphasised in relation to the policy considerations that objectives trump policies where there is any conflict, and noted that consideration of precedent issues depends upon the existing environment. She considered that the effects on the environment are no more than minor, and advised that she did not believe that there is any planning reason for the application not to be approved. She advised that consent should be subject to fair and reasonable conditions that are supported by expert evidence.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 10 Industrial, 20 Transportation and 21 Environmental Issues, and the relevant provisions of the proposed Dunedin City District Plan. Consideration was also given to the Regional Policy Statement for Otago and Proposed Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

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

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken on 3 May 2018. During this visit the Committee inspected both the site subject of the application and the adjoining site occupied by the submitter. This enabled the Committee to have a clear understanding for its considerations of the physical reality of the sites, and the context of matters raised in evidence at the hearing.

*Pursuant to sections 34A(1), 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, to the provisions of the Operative Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non complying activity** for residential activity at 5 Clark Street, Dunedin, being the land legally described as Lot 2 DP439708 (CFR 545479) as follows:*

- to establish a seven bedroom apartment (one residential unit) in the vacant ground floor of the existing building; and*
- to reconfigure the existing consented residential apartments on the first floor (three residential units) to create one additional habitable room,*

subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.

Reasons for this Decision

1. The Committee were satisfied that any actual or potential adverse effects on the environment from the proposed development will be no more than minor, and could be adequately mitigated by the conditions of consent set out in this decision. Overall, the Committee consider the proposed development is not likely to give rise to adverse effects on those elements of the Industrial zone that the Dunedin City District Plan seeks to protect. In the view of the Committee, the adverse effects on the amenity of the submitters' property resulting from the intensification of residential activity on this site, including noise and traffic effects, are likely to be minor, and can be mitigated by the conditions imposed in this decision.
2. In relation to traffic effects the Committee were mindful of factors such as the potential occupancy of the residential units on the site, and extent to which these occupiers would be likely to have cars. However, the Committee noted that the only expert evidence provided on this matter was from Mr Fisher, the Council Transportation Planner/Engineer who advised that the parking provision and traffic effects were acceptable. The Committee also noted that the District Plan rules did

not support any expectation that all residents would necessarily have parking available on site or in the vicinity, whatever zoning was used for comparison. Developments of a similar scale in the adjacent residential zone require only one on-site car park per residential unit, and in the adjoining central activity zone none are required.

3. The Committee accepted that the issue of reverse sensitivity related to the impact of the proposed residential activity on land in the vicinity that is currently used for, or likely to be developed for, industrial or other non-residential activities. The Committee noted that the land at 61 MacLaggan Street was currently vacant, but could be developed as a permitted activity for industrial activity. The Committee noted that it was not in a position to know what development may occur on this adjoining site, and whether the existing boundary wall would be replaced as part of any site development. However, what it did know was that the owner of the land had been notified of the application and had not chosen to make a submission. Likewise the owner of the property containing the motorcycle club premises at 3 Clark Street had not submitted.
4. The Committee considered the concerns of the submitters in relation to the impact on the amenity of their residence at 9 Clark Street, and determined that there were some measures accepted by the applicants' that could be imposed as conditions to mitigate this impact. This included the requirement for screening of the upper deck area adjoining their property. However, the Committee note that this is only to preserve a degree of privacy, and that views into the rear yard of 9 Clark Street is something to be expected as part of development within this urban area. In this respect the Committee were mindful that privacy is a matter given little if any protection by the District Plan. Where it is enjoyed rules controlling other effects (such as building height limits) may only maintain privacy as an indirect benefit. The Committee were mindful that as the subject site and 9 Clark Street are both zoned Industrial, the level of amenity anticipated by the Plan is not that of a residential environment. Further, the permitted baseline would allow adverse effects on the amenity of 9 Clark Street that could potentially be greater.
5. The Committee considered that the proposal is inconsistent with the majority of the relevant objectives and policies of both the operative and proposed District Plans, and contrary to some for the Industrial zone in the proposed Plan. However, the Committee accepted the view of Ms Shipman that overall the proposal was not contrary to the District Plans. The Committee considered that the proposal is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago and provisions of Part II of the Resource Management Act 1991.
6. The Committee agreed with the opinion of Ms Shipman and Ms Lindsay that the proposal meets both branches of the Section 104D test of the Act, but noted that only one limb needed to be passed to allow consideration of the granting of consent to the proposal. Accordingly, the Committee was able to consider granting consent.
7. The Committee were satisfied that the proposal is a true exception. It is noted by the Committee that residential activity is already well established within the footprint of the existing building, and the proposed development does not seek to increase the footprint of the building, other than by the creation deck areas for outdoor amenity. The Committee accept the view of Ms Shipman that when combined with the presence of other out of zone residential development to the immediate north of the site, and the location of Residential 4 zoned development to the south of the site, the physical environment is not strictly industrial and in fact has been modified to that of a mixed residential/industrial environment on the periphery of the Industrial Zone. Further the Committee noted that the site is at the junction of three zones, with the land to the east being part of Central Activity Zone. While the current provisions of the Proposed 2GP do not recognise this transitional character, the Committee accept that there will

always be locations where residential activity may be appropriate despite the zoning rules providing otherwise, and an assessment will be required on a case by case basis to determine if a proposal is acceptable.

8. The Committee considered that overall the planning evidence provided by all planning witnesses was comprehensive and addressed all relevant matters. However, the Committee were particularly mindful of the role of an expert witness as distinct from an advocate for a party in hearing proceedings. The Committee was satisfied in particular, that a balanced analysis of evidence was presented by Ms Shipman for the Council and Ms Lindsay for the Applicant. However, the Committee was concerned that some aspects of the analysis of Mr Anderson for the submitters did not seem as objective when considered against the facts of the proposal.
9. The Committee concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Right of Appeal

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

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

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

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

Please direct any enquiries you may have regarding this decision to Campbell Thomson, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Monitoring

Section 35(2)(d) of the RMA requires every Council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works, this consent will require one inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspections will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'David Benson-Pope', with a long horizontal flourish extending to the right.

David Benson-Pope
Chair, Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2017-561

Pursuant to sections 34A(1), 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, to the provisions of the Operative Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non complying activity** for residential activity at 5 Clark Street, Dunedin as follows:

- to establish a seven bedroom apartment (one residential unit) in the vacant ground floor of the existing building; and
- to reconfigure the existing consented residential apartments on the first floor (three residential units) to create one additional habitable room,

subject to conditions imposed under section 108 of the Act, as set out below.

Location of Activity: 5 Clark Street, Dunedin

Legal Description: Lot 2 Deposited Plan 439708 (Computer Freehold Register 545479)

Lapse Date: 21 May 2023

Conditions

General:

1. The proposal must be given effect to generally in accordance with the architectural plans prepared by Gary Todd Architecture Ltd entitled, 'Development of 5 & 7 Clark Street-Dunedin', Project 1097, and the accompanying information submitted as part of LUC-2017-561 received by Council on 30 October 2017, and additional information received on 24 November 2017 (noise mitigation), except where modified by the following:

Transport:

- 2 All on-site parking spaces must be permanently marked in accordance with the layout in the consent application.
- 3 Each on-site parking space must be allocated individually to each of the residential units. The consent holder must ensure these car parks are not leased out to non-residents for parking.
- 4 Dedicated, covered, and secure storage for at least two bicycles shall be provided within the site.

Noise and Amenity Effects:

- 5 The activity authorised by this consent must produce no greater than 8 lux of light onto any other site used for residential activity during nighttime hours pursuant to Rule 21.5.4 (i)(b) of the District Plan.
- 6 The consent holder must ensure noise from activity taking place on the site will not exceed the performance standard set out in Rule 21.5.1 of the District Plan.
- 7 Any kitchen, dining area, living room, study or bedroom in the ground floor apartment must be acoustically insulated from noise from the external environment in order to minimise any potential reverse sensitivity effects. The Airborne Sound Insulation provided to insulate these rooms shall achieve a minimum performance standard of **D 2m nT,w + Ctr >30.** Compliance with this performance standard shall be achieved by ensuring that the rooms identified above are designed and constructed in accordance with either:
 - i) A construction specification approved as an acceptable solution in the New Zealand Building Code for the provision of Airborne Sound Insulation that is specifically designed to protect against noise from the external environment and that will achieve compliance with the minimum performance standard; or
 - ii) An acoustic design certificate signed by a suitably qualified engineer stating that the design as proposed will achieve compliance with the minimum performance standard.
- 8 The consent holder must submit a plan to Council for screening of the upper level deck area adjacent to 9 Clark Street, to ensure views into the bedrooms of the adjoining residential building at 9 Clark Street from this deck area are avoided. The plan is to be subject to the approval of the Resource Consents Manager and the approved works must be completed within 12 months of the completion of building construction.
- 9 Construction Noise must not exceed the following upper limits for construction noise:

Time week	of Time period	Duration of work					
		Typical duration (dBA)		Short-term duration (dBA)		Long-term duration (dBA)	
		Leq	Lmax	Leq	Lmax	Leq	Lmax
Weekdays	0630-0730	60	75	65	75	55	75
	0730-1800	75	90	80	95	70	85
	1800-2000	70	85	75	90	65	80
	2000-0630	45	75	45	75	45	75
Saturdays	0630-0730	45	75	45	75	45	75
	0730-1800	75	90	80	95	70	85
	1800-2000	45	75	45	75	45	75
	2000-	45	75	45	75	45	75

	0630				
Sundays and public holidays	0630-0730	45	75	45	75
	0730-1800	55	85	55	85
	1800-2000	45	75	45	75
	2000-0630	45	75	45	75

Noise limits (Leq) of 55dBA during daytime or 45 dBA at night time may mean that no construction work can take place.

- 10 An "Application for Water Supply" must be submitted to the Water and Waste Group for approval to establish an upsized water connection to the property. Details of how the property is to be serviced for water shall accompany the "Application for Water Supply".
- 11 An RPZ boundary backflow prevention device must be installed on the upsized water connection, to the satisfaction of the Dunedin City Council Water Bylaw Compliance Officer (refer to advice note).
- 12 A water meter is required on the upsized water connection to the property.
- 13 The consent holder must advise the Council, in writing, of the start date of the works. The written advice must be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.

Advice Notes

General

- 1 In addition to the conditions of resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
- 2 Resource consents are not personal property. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 4 It is the responsibility of any party exercising this consent to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
5. Unless otherwise specified all conditions should be complied with within 12 months of the consent having been given effect to.
6. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the proposed building alterations, service installation or any other works associated with the consented activity.

Environmental Noise

7. It is recommended that the consent holder make provision for attenuation of noise between the existing residential units on site, and between these units and the proposed unit below on the ground floor, in order to future proof options for the long occupation and ownership of the site, as well as meet obligations under the Residential Tenancies Act 1986. While condition 7 of this of consent has focussed on the proposed additional unit created, the Committee are mindful that it may be easier to address acoustic insulation for the existing units as part of the current redevelopment of the site, than to deal with this as a subsequent retrofit of the building. Likewise, Building Act requirements for separate ownership of the units may be worth considering now, even though there may be no current intention to unit title this development.

Code of Subdivision & Development

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

Water services

9. Detail of the water supply application process can be found at <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
10. Installation of a boundary backflow prevention device requires a building consent, or an exemption from a building consent. Further information is available at <http://www.dunedin.govt.nz/services/water-supply/backflow>.
11. All aspects relating to the availability of water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
12. It is recommended that the consent holder implement water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers, within existing and new units to reduce water consumption and therefore the volume of wastewater generated.

Private drainage matters

13. Private drainage issues and requirements (including any necessary works) are to be addressed via the Building Consent process.

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

Issued at Dunedin this 21st day of May 2018

A handwritten signature in blue ink, appearing to read 'David Benson-Pope', with a long horizontal flourish extending to the right.

David Benson-Pope
Chair, Hearings Committee

Appendix 1: Copy of Approved Plans for LUC-2017-561 (Scanned image, not to scale)

Plans of the proposed configuration and elevations of building received with application on 30 October 2017



