

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN LEX ANDERSON AND HILDA
CRAIGHEAD

(ENV-2012-CHC-135)

Appellants

AND

DUNEDIN CITY COUNCIL

Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

CONSENT ORDER

[A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed and subdivision consent¹ and land use consent² is granted subject to the amended conditions set out in Annexure 1, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

[B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] On 7 December 2012 Lex Anderson and Hilda Craighead lodged an appeal against a decision of the Dunedin City Council declining consent for a five lot

¹ SUB-2011-033.

² LUC-2011-132.



subdivision and consent for new dwellings on Lots 1 to 3 of the subdivision at 761 Aramoana Road, Te Ngaru.

[2] The court has now read and considered the consent memorandum of the parties dated 23 April 2013 which proposes to resolve the appeal.

[3] The appellants have significantly reduced the scale of the proposal so that it now involves the subdivision of two lots from the parent title along with the land use consents for the existing dwelling on a new site and one new residential dwelling on the balance lot.

Other relevant matters

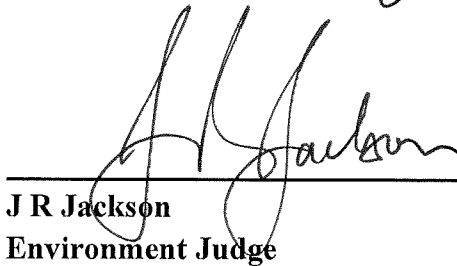
[4] No person has given notice of an intention to become a party under section 274 of the Resource Management Act 1991 ("the RMA" or "the Act").

Orders

[5] The court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

DATED at Christchurch 8 May 2013


J R Jackson
Environment Judge



Issued: 08 MAY 2013

2012-chc-135 anderson v dcc consent order

Annexure 1

Consent type: Land Use and Subdivision

Consent Number: SUB-2011-033, LUC-2011-132

Consent Holder: Lex Anderson and Hilda Craighead

Location of Activity: 761 Aramoana Road, Te Ngāru

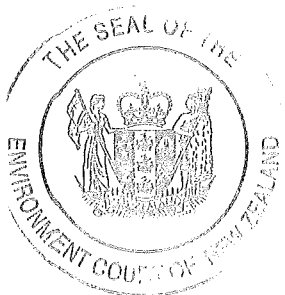
Legal Description: Lot 1 DP17304 and Lot 1 DP 386904 held together in Certificate of Title CFR 376663

Lapse Date: 5 years from the consent being granted unless the consent has been given effect to before this date.

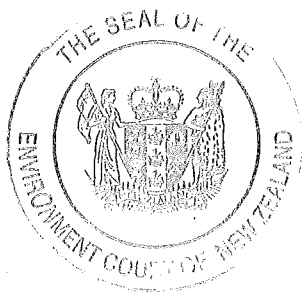
Pursuant to sections 34A and 104B and after having regard to Part 2 matters and section 104 and 104D of the Resource Management Act 1991, land use and subdivision consent is granted to a non-complying activity being the subdivision of the land held in CFR 376663 into two lots with the right for a residential dwelling on each lot subject to conditions imposed under sections 108 and 220 of the Act.

SUBDIVISION CONSENT**SUB-2011-033****Conditions:**

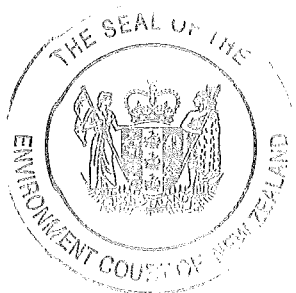
1. The subdivision authorised shall be limited to the creation of separate computer freehold registers for the land in the existing Lot 1 DP17304 and proposed new Lot 1 (presently Lot 1 DP 386904), which are currently held together in CFR 376663, in accordance with the subdivision plan by Craig Horne, Registered Surveyor, dated 18 March 2013. This subdivision shall otherwise be generally in accordance with the information contained in the application for resource consent received by the Council on 11 April 2011, except where modified by the following conditions.
2. That prior to certification pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:



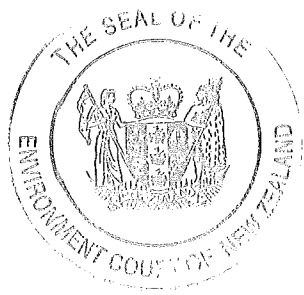
- (a) If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan. This includes any necessary additional easements for private drainage.
3. Prior to certification pursuant to section 224(c) of the Resource Management Act, the subdivider shall comply with the following conditions:
- (a) The vehicle access to the existing dwelling on Lot 1 DP17340 shall be upgraded as required to ensure a minimum formed width of 3.5m is provided, hard surfaced from the edge of the carriageway of Aramoana Road to a distance not less than 5.0 metres inside the property boundary, and be adequately drained for its duration. Engineering details for this work shall be submitted to, and approved by, the Transportation Operations Manager, prior to construction commencing.
- (b) A Plan shall be prepared by a suitably qualified person (approved by the Consents Manager) for attachment to the consent notice in '(d)' below. That Plan, referred to hereafter as the 'Vegetation Plan', shall determine the species and extent of vegetation to be planted for effluent disposal and hazard management purposes within the 20m wide area at the rear of the dwelling site within Lot 1 DP386904 generally in the location shown cross-hatched and marked "buffer zone" on the attached plan entitled "Effluent disposal area and 20 metre buffer zone".



- (c) A consent notice shall be registered against the CFR for the new title comprising Lot 1 DP17304, setting out the following ongoing conditions:
- (i) any replacement dwelling on this site shall have a minimum floor level of 102.675m Otago Datum, and shall be constructed with piled foundations to facilitate future relocation.
 - (ii) any replacement dwelling and accessory buildings on this site shall be no closer than 20m to the rear boundary to reduce the risk of rockfall from the steep land within Lot 1 DP386904 to the rear of the site.
 - (iii) "No additional structures shall be established on the site beyond those authorised by the Land Use Consent LUC-2011-132."
- (d) A consent notice shall be registered against the CFR for the new title comprising Lot 1 DP386904, setting out the following ongoing conditions:
- (i) any dwelling and accessory buildings on this site shall be located within the "Building Platform" shown on the subdivision plan by Craig Horne, dated 18 March 2013. This building platform is located on an elevated part of the site, to mitigate flood risk and away from the steep slopes at the rear of the site to mitigate the risk of damage or injury from rockfall.
 - (ii) any dwelling shall have a minimum floor level of 102.675m Otago Datum, and shall be constructed with piled foundations to facilitate future relocation.
 - (iii) residential activity on this site shall be limited to one residential unit established in accordance with land use consent LUC-2011-132. It shall be of single storey design with a maximum height of 6m above existing ground level.

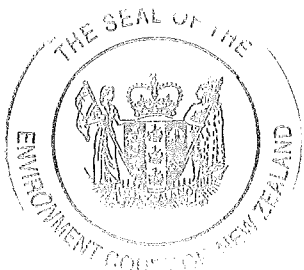


- (iv) The vegetation identified on the attached Vegetation Plan and identified as "Existing vegetation to be retained to a depth of no less than 2m" on the plan by Craig Horne dated 18 March 2013 shall be retained in perpetuity. No clearance of this vegetation for grazing, tracking, construction of structures is authorised, other than any excavation necessary for installation and maintenance of the effluent disposal field drainage.
- (v) "No additional structures shall be established on the site beyond those authorised by the Land Use Consent LUC-2011-132."

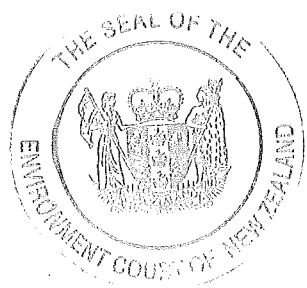


LAND USE CONSENT**LUC-2011-132****Conditions:**

1. The land use for residential activity authorised by this consent shall be limited to the establishment of one residential unit within new Lot 1 (currently Lot 1 DP 386904), and the continuation of the existing residential unit within Lot 1 DP17304, being the separate sites to be created by subdivision consent SUB-2011-33. This activity shall be undertaken generally in accordance with the information contained in the application for resource consent received by the Council on 11 April 2011, except where modified by the following conditions:
2. The proposed dwelling on new Lot 1 (the existing Lot 1 DP386904) shall be located wholly within the Building Platform depicted on the subdivision plan by Craig Horne, dated 18 March 2013.
3. The residential unit on new Lot 1 (the existing Lot 1 DP386904) shall be the building currently stored temporarily on the site, unless it is replaced with an alternative building of similar bulk and scale. When completed it shall be mounted on piled foundations with a floor height not less than 102.675m Otago Datum. Any external alterations or extensions to complete this building shall not increase the height of the structure beyond 6m above existing ground level. Garaging shall be provided by means of an addition or detached accessory building rather than as a basement underneath the existing structure. The final design details shall be submitted to the Resource Consents Manager for approval, prior to the application for building consent being lodged with the Council.
4. The residential unit on Lot 1 DP17304 shall be limited to the existing residential building, or future replacement building of similar scale and dimensions in the same location.
5. No building on proposed Lot 1 (the existing Lot 1 DP386904) or Lot 1 DP17340 shall encroach upon the land 35m to 55m metres from Aramoana Road, being the 'no build' area suggested by the applicant as a buffer area between residential development and the steep land, where there is a potential risk of rockfall.



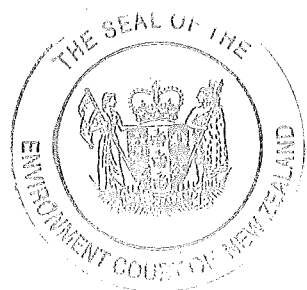
6. The "buffer zone" referred to in Condition 3(b) of SUB-2011-33 shall be planted in accordance with the approved Vegetation Plan.
7. Vehicle access to the proposed dwelling on the new Lot 1 (the existing Lot 1 DP386904) shall be located so that the vehicle entrance to Aramoana Road is as close as practical to the boundary with Lot 1 DP17304, in order to optimise the safety of entry to and egress from the site. Prior to the occupation of the completed dwelling on this site, the vehicle entrance from Aramoana Road shall be formed to a minimum width of 3.5m, hard surfaced from the edge of the carriageway of Aramoana Road to a distance not less than 5.0 metres inside the property boundary, and be adequately drained for its duration. Engineering details for this work shall be submitted to, and approved by, the Transportation Operations Manager, prior to construction commencing.
8. The vehicle crossing shall be designed by a suitably qualified engineer. Engineering plans detailing the vehicle crossing shall be submitted to, and approved by, the Transportation Operations Manager, prior to construction commencing.
9. The proposed activity shall produce no greater than 8 lux of light onto any other site used for residential activity during night-time hours pursuant to Rule 21.5.3 (i)(b) of the Dunedin City District Plan.
10. The consent-holder shall take all reasonable measures to 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.
11. The consent holder shall sign a Deed with the Dunedin City Council stating the following:
 - (a) The consent holder understands and accepts the probabilities of flooding at 761 Aramoana Road, Te Ngaru , Dunedin from various sources of coastal inundation, including but not limited to storm surges or tsunamis, with or without the potential effects of sea level rise, and accepts the potential costs to them, their family and visitors, both monetarily and personally.



- (b) The consent holder shall not complain about the natural hazards at the site;
 - (c) The consent holder shall not sue the Dunedin City Council in negligence for issuing Subdivision consent SUB-2011-33 or land use consent LUC-2011-132;
 - (d) The consent holder will obtain a Deed on the same terms from any subsequent purchaser or leasee of the land in new Lot 1 (the existing Lot 1 DP386904) or Lot 1 DP17304.
12. Prior to the occupation of the completed dwelling on new Lot 1 (the existing Lot 1 DP386094) domestic water and fire fighting storage is to be provided. A minimum of 20,000 litres shall be maintained at all times as a static fire fighting reserve in addition to water required for domestic needs. Alternatively, a 7,000 litre fire fighting reserve is to be made available in association with a sprinkler system installed to an approved standard.
13. The on-site effluent disposal system for the dwelling on new Lot 1 (the existing Lot 1 DP386904) shall be designed and its disposal field location confirmed by a suitably qualified person. This design and location shall be submitted to and approved by the Resource Consents Manager prior to construction commencing.
14. All construction noise shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999:

<i>Time of Week</i>	<i>Time Period</i>	<i>Leq (dBA)</i>	<i>L max(dBA)</i>
<i>Weekdays</i>	<i>0730-1800</i>	<i>75</i>	<i>90</i>
	<i>1800-2000</i>	<i>70</i>	<i>85</i>
	<i>2000-0630</i>	<i>45</i>	<i>75</i>
<i>Saturdays</i>	<i>0730-1800</i>	<i>75</i>	<i>90</i>
	<i>1800-2000</i>	<i>45</i>	<i>75</i>
	<i>2000-0630</i>	<i>45</i>	<i>75</i>
<i>Sundays and public Holidays</i>	<i>0730-1800</i>	<i>55</i>	<i>85</i>
	<i>1800-2000</i>	<i>45</i>	<i>75</i>
	<i>2000-0730</i>	<i>45</i>	<i>75</i>

15. If the consent holder:

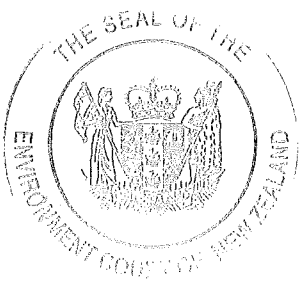


- (a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder shall without delay:
- (i) notify the Consent Authority, Tangata whenua and New Zealand Historic Places Trust 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 the New Zealand Historic Places Trust and the appropriate runanga and their advisors, who shall 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 shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation.

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

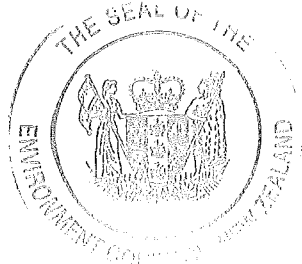
- (b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder shall without delay:
- (i) stop work within the immediate vicinity of the discovery or disturbance and
 - (ii) advise the Consent Authority, the New Zealand Historic Places Trust, and in the case of Maori features or materials, the Tangata whenua, and if required, shall make an application for an Archaeological Authority pursuant to the Historic Places Act 1993 and
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.



Site work shall recommence following consultation with the Consent Authority.

Advice Notes:

1. In addition to the conditions of resource consent, the Resource Management Act 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 under the Resource Management Act 1991 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. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
6. The vehicle access, from the carriageway to the property boundary, is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).
7. It is advised that in the event of any future development on the site, Transportation Operations would assess provisions for access, parking and manoeuvring at the time of resource consent/building consent application.
8. All wastewater from within any future building or buildings on the site shall be treated and disposed of within legal boundaries by means of systems which comply with the New Zealand Building Code G.13 and G.14, Australian/New Zealand Standards AS/NZS 1546.1:1998 and AS/NZS 1547:2000, or with Dunedin City Council's "Guidelines to On-Site Wastewater Disposal" 2001.



9. If the designs offered in the publications listed above in note 8 are not suitable for the site or the proposed use, the wastewater system shall be specifically designed by a person with suitable professional qualifications and experience. Reference should be made to engineering manuals such as the Auckland Regional Council's Technical Publication No. 58, "On-site Wastewater Disposal from Households and Institutions", and shall be designed to minimise the risk of erosion or slippage resulting from the operation of that system. Sufficient information should be provided on the soil profile in terms of soakage capacity and the depth of any impermeable layer or the groundwater table to support the choice of design. It is requested that full details of the proposed system and its location, with all supporting information be supplied with the application for Building Consent for any new dwelling.
10. Any on-site effluent or stormwater disposal system is required to comply with the requirements of the Regional Plan: Water for Otago.
11. It is advised that any earthworks undertaken on the site must comply with the permitted activity standards in Rule 17.7.3 of the District Plan. The relevant thresholds for earthworks are detailed in Table 17.5 of the Plan. Should the setbacks or scale thresholds or other requirements of Rule 17.7.3 be exceeded with respect to the site development, then a further resource consent will be required to authorise the earthworks.
12. For more information on how to comply with the Conditions for fire fighting provision, or on how to provide for the NZFS operational requirements, refer to the New Zealand Fire Service Fire Fighting Water Supplies Code of Practice SNZ PAS 4509:2008, which can be retrieved from:

http://www3.fire.org.nz/CMS_media/pdf/da516e706c1bc49d4440cc1e83/09964.pdf

