

28 March 2017

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Dear Kurt

RESOURCE CONSENT APPLICATION

**SUB-2016-107 and LUC-2016-539
49 WALTON STREET
DUNEDIN**

The above application for a two lot subdivision and associated residential activity on the site located at 49 Walton Street, Dunedin was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee (the Committee), comprising Independent Commissioner Colin Weatherall (Chair) and Councillors Mike Lord and Jim O'Malley heard and considered the application at a hearing on 22 March 2017.

The Committee accompanied by the Committee Advisor, Kirstyn Lindsay, completed a site visit prior to the hearing. 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.

The Committee **declined** consent to the application on 22 March 2017. The full text of this decision commences below.

The Hearing and Appearances

The applicant was represented by:

- Kurt Bowen (Applicant's Surveyor and Advocate)
- Marilyn Innes and Chris Featonby (Applicants)

Council staff in attendance were:

- Kirstyn Lindsay (Advisor to Committee)
- Darryl Sycamore (Processing Planner)
- John Eteuati (Water and Waste Services)
- Arlene Goss (Governance Support Officer)

Submitters in attendance included:

- Lisa Scanlan (Neighbour)
- Evan Morris (Neighbour)

Procedural Issues

- 1 Clarification was sought by the Committee as to the status of Mr Morris. Mr Morris had provided written approval to the application and subsequently had made a joint submission with Ms Scanlan. Mr Morris elected to withdraw his written approval and rely on his submission. The Applicant did not object to this and the Committee accepted the withdrawal of Mr Morris' written approval and restore his rights to him pursuant to s104(4) of the Act.
- 2 The applicant requested that the Council's urban designer, Mr Peter Christos attend the hearing. The Committee directed that Mr Christos be called to give evidence.

Principal Issues of Contention

The principal issues of contention are as follows:

- Density
- Bulk and location of the units
- Character of the existing neighbourhood
- Infrastructure constraints
- Access
- Policy framework

Summary of Evidence

Introduction from Processing Planner

Mr Sycamore summarised the application noting specifically that resource consent was sought to subdivide and develop a 455m² site at 49 Walton Street, Dunedin. He noted that the property is zoned Residential 1 in the Dunedin City District Plan and contains a small bungalow built circa 1915. The site has frontage to both Walton and Font Streets. The proposal seeks to create two new Lots. A small two-storied dwelling is proposed for each new Lot.

Mr Sycamore noted that, in terms of subdivision, the Residential 1 zone of the operative District Plan provides for a minimum lot size of 500m². New Lot 1 would comprise 254m², have frontage to Walton Street and have access via a Right of Way (RoW) over new Lot 2. New Lot 2 would have frontage to Font Street and comprise 206m², or 158m² net when accounting for the RoW. When assessing the bulk and location effects of the overall proposal, Mr Sycamore considered that the proposal would result in an over-development of the site.

In terms of effects, Mr Sycamore considered that the key matter related to the capacity of the piped infrastructure. The Council's Water and Wastewater Hydraulic Modeller, Mr John Eteuati has assessed the capacity of the wastewater and stormwater network and confirms the current infrastructure is over-allocated and there is little capacity for further development.

In terms of the policy framework, Mr Sycamore concluded that the proposal was contrary to the key objectives and policies for the sustainability, subdivision and residential sections. Overall, it is his conclusion that the application passes neither s104D gateway test and that the Committee could not consider granting the consent. He did not consider that there was anything unique about this proposal and he did not believe it was a true exception. It was Mr Sycamore's recommendation that the application be declined.

Officers Comments

Mr Christos was questioned by the Committee regarding the design of the development. While he did not comment on the density specifically, he considered that the treatment of the dwelling fronting Walton Street could be better designed so that interacted with the street and did not look like the rear of a dwelling. Overall, he believed that the dwellings would look unremarkable in this area given their bungalow style form.

Mr Eteuati noted that the stormwater and wastewater systems were operating at full capacity and that increases in density were not encouraged. He noted that while the system was being upgraded, this would only provide for existing demand (including the development of vacant sites within their zoned density potential). He accepted that there were engineering solutions to ensure adequate detention on the site for both stormwater and wastewater but he would need to review calculations to determine if an adequate detention volume.

The Applicant's Case

Mr Bowen spoke to his tabled hearing notes, outlining the applicant's long-term association with the area and their intention to create small, warm units for mobile retirees. He considered the improvement to the housing stock to be of positive benefit and will serve a niche demographic who are struggling to find suitable accommodation. He also believed that visible investment in the area would result in other investment and could trigger other renewal projects.

Mr Bowen provided analysis of the residential density and site configuration in the immediate area. When questioned by the Committee, Mr Bowen conceded that there were no sites in the area as small as 206m². Mr Bowen discussed a Baker Garden Architects report which was used to evaluate possible higher density areas of the 2GP. He noted that the subject site was originally defined in this report as being appropriate for medium density and that he was unsure why the 2GP had not promoted this zoning at the time it was notified.

Mr Bowen offered water and waste retention solutions to address the infrastructure constraints on the site. He discussed shading effects from the development and noted that while adjacent properties would be shaded to some degree, there was a certain amount of shading which could occur from a fully complying structure on the site.

Mr Bowen provided an objective and policy analysis of the operative District Plan, concluding in the applicant's opinion that the proposal passed the s104D gateway test and the Committee was free to consider granting the consent. He did not consider that the Committee should be concerned by any precedent set by the granting of this proposal as he believed any precedent would be limited in nature and in timescale due to the pending 2GP. Overall, Mr Bowen requested that the consent be granted.

Ms Innes then spoke about her long-standing relationship with the area, noting she had been born not too far from the subject site. She outlined her and her husband's specific housing needs, noting that they were aware of many other people like them who could not find suitable housing.

Evidence of Submitters

Mr Morris spoke to his submission noting he had been in the area for many years and that his dwelling had been his family home. He was concerned about the loss of sun from the unit fronting Font Street. He also believed that this unit would result in a partial loss of view.

Ms Scanlan spoke to her submission. While she was also concerned about the loss of sun and views, she was mainly concerned about the density of the proposal and what this would mean for the character of the area. She was somewhat reassured that the applicant had confirmed that they were not intending students to occupy the site and could see the benefits of new development.

Processing Planner's Review of Recommendation

Mr Sycamore reviewed his position noting that the central issue revolved around conflict of the proposal with the relevant planning instruments and the ability of Council's infrastructural network to accommodate additional loading. He accepted the argument presented by the applicant that the development is likely to support a low number of residents and that in terms of infrastructure, the proposed controls would likely result in lower rates of discharge.

Mr Sycamore accepted that there were genuine positive effects, but he was unconvinced that these outweighed the negative and believed he would be remiss if he did not provide an objective analysis of both positive and negative aspects of the development.

After reviewing the evidence presented at the hearing, Mr Sycamore revised his position regarding the actual and potential effects associated with the proposed development and he now believed that the effects limb of the s104D gateway test can be met, albeit narrowly. His change of stance of the environmental effects related to managed discharges to the Council's piped infrastructure.

In terms of the policy framework, Mr Sycamore continued to be of the view that the proposal will be contrary to the key objectives and policies for the sustainability, subdivision and residential sections and therefore the second limb of the s104D gateway test could not be met. It was his opinion there is no need to look to Part 2 of the Act as there is no ambiguity, incompleteness or illegality in the District Plan.

With respect to precedence, Mr Sycamore noted that each application must be considered on its own merits. However, he considered that precedent was a genuine issue in this case. He considered that little weight should be given to the applicant analysis of regarding the density of surrounding sites given that these had been established under a different planning regime. It was his opinion that the specific characteristics of the subject site were the same as a number of surrounding properties. He did not consider that the application had enough characteristics that were sufficiently distinct and he considered that its granting may threaten the integrity of the district plan. It remained his recommendation that the application be declined.

Applicants Right of Reply

Mr Bowen responded to Mr Sycamore's review, noting that there remained a need for suitable housing for the target demographic and that set this proposal apart from others. He believed that the overall effects of the proposal were positive and infrastructure adverse effects could be addressed through engineering solutions. He considered that shading effects would be no worse than that of a permitted development. Mr Bowen offered to remove the subdivision component of the proposal if this would sway the committee. He accepted Mr Sycamore's objective and policy analysis and agreed that there was no need to revert to Part 2 of the Act. Overall, Mr Bowen remained of the view that the Committee should grant consent.

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, 5 Manawhenua, 8 Residential Zones, 18 Subdivision, 20 Transportation and 21 Environmental Issues. Consideration was also given to 6 Transportation, 9 Public Health and Safety and 15 Residential Zones of the 2GP.

Main Findings on Principal Issues of Contention

The Committee has considered the evidence heard, the relevant statutory and plan provisions and the principle 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.

*That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **declines** consent to a **non-complying** activity being two lot subdivision with two residential units at 49 Walton Street, legally described as Lot 16 Deposited Plan 130, (Computer Freehold Register OT7D/1274).*

Reasons for this Decision

- 1 The Committee accepts the intentions of the applicant to provide suitable housing for their identified demographic noting that the provision of two bedroom townhouses are consistent with the presumed future needs of an aging population and consistent with the city's desire to use land efficiently. The Committee notes however, that the city, through the 2GP process, has signalled areas within the city where increases in density are appropriate and achievable. The Committee are aware that, while initially considered, it appears that a decision was made early on in the 2GP process to remove Walton Street from the area proposed for higher density.

Effects on Water and Waste Infrastructure

- 2 The Committee recognises that the area is an infrastructure constraint area and that the infrastructure demand is already near full capacity. While they recognise that a programme of works for the water and waste infrastructure upgrade has commenced, this upgrade will only cater for the existing development potential of the area.
- 3 The Committee recognises that the proposed development would result in only four bedrooms on the site. However, they are cognisant that these are split into two households and it is anticipated there will be duplication of certain activities such as cooking and ablutions. Therefore, the Committee anticipates that maximum loading on the infrastructure would be more than would be generated by a single four-bedroom dwelling. Moreover, peak demand for both houses could coincide.
- 4 According to the concept plans, the development will result in close to 100% impervious surfaces, which has significant implications for runoff during storm events. The applicant does offer engineered solutions which would assist with peak demand issues but the Committee is not confident that the city infrastructure could accommodate any significant intensification of housing as exemplified by this proposal.
- 5 The Committee recognises that while there are solutions which could be engineered to detain the waste and storm water on the site, the detention capacity needed was yet to be calculated, the Committee expects that the additional room that detention tanks would require could negatively impact the outdoor amenity space on an already tightly developed site.

Effects on Transportation

- 6 The Committee acknowledges that the RoW is under the required width and does not meet the required separation of the RoW from the dwelling fronting Font Street. However, the Committee notes that the Transportation Planner raised no concerns with the RoW and there was no other expert evidence presented in terms of transportation effects. Furthermore, the Committee is comforted by the close proximity of fire hydrants which means there is no need for fire appliances to access the site.
- 7 The Committee recognises that Font Street experiences a low volume of traffic and accepted that the addition of a second residential unit would have negligible effect on the traffic in the area. Overall, the Committee noted that the transportation effects were acceptable and on their own did not factor into their reasons to decline the consent.

Effects on the Character of the Neighbourhood

- 8 The Committee appreciates the work undertaken by the applicant and Mr Sycamore to provide some analysis of the overall density and character of the immediate area. The information supports the reality experienced by the Committee during their site visit.
- 9 The Committee's main concern relates to the proposed size of the lots and the effect that these would have on the character of the area. At 254m² and 206m² (158 m² after removal of right of way area) the proposed lots are 51% and 41% (32%) of the minimum lot size requirements for the Residential 1 zone of the operative District Plan. For completeness, the Committee notes that the 2GP (as notified) retains a similar density for this area as the current Residential 1 zone.
- 10 The Committee considers that the proposed lot sizes are a significant departure from typical sites in this area. While the Committee encourages the construction of new housing stock in the area, they feel that development at this density would negatively impact on the character of the area.
- 11 The Committee acknowledges Ms Scalan's concerns that the approval of this proposal would send the wrong signal to other developers and she could soon be surrounded by development of a much higher density than anticipated. Ms Scalan did recognise the benefit of improved housing stock and she encouraged this to occur but at a more appropriate density.
- 12 The Committee notes the applicant's offer to not subdivide the site in response to Ms Scalan's concerns but believes that this offer would have little positive benefit given that the applicant or subsequent owner could apply for a subdivision in the future once the two units were established. Furthermore, the Committee gives little weight to the applicant's proposal to only let the second dwelling to retirees as this offer would only be available for a finite period which would be substantially shorter than the expected life span of the proposed dwellings.

Effects on Urban Design

- 13 The Committee acknowledges the care that has gone into the design, noting that it was generally architecturally sympathetic to the receiving environment. They accept the comments of Mr Christos in respect of the overall design of the units and how these will present to the streetscape. They also note there was no other expert urban design evidence offered by any of the parties. They also thank the applicant for their willingness to adjust their design to accommodate a more interactive treatment to Walton Street.
- 14 The Committee acknowledges Mr Morris' concerns regarding the loss of sunlight as a result of the unit fronting Font Street. However, the Committee accepts the applicant's contention that a single dwelling which meets all the performance standards for the zone may have an equal or greater effect on the sunlight accessibility to Mr Morris' property.
- 15 However, the Committee cannot overlook the breaches of bulk and outdoor amenity space introduced by this development and considers that these performance standards would likely be compromised even further, should water and waste infrastructure containment be required for the site. The Committee is of the opinion that these breaches are largely a consequence of trying to fit two structures on a site that is too small to receive them.

Overall Effects Assessment

- 16 The Committee considers that, while on their own the individual breaches of the performance standards may not be significant, the cumulative effect of these breaches present as an overdevelopment of the site. The Committee are satisfied that this view is supported by Mr Sycamore in his planning evidence.

Precedence and True Exception

- 17 The Committee finds that there is nothing which serves to set this proposal from other like applications. The Committee does not accept the applicant's suggestion that catering for accommodation needs of a specific demographic is a true exception. The stance, that there is nothing distinct about this proposal, is supported by Mr Sycamore in his planning evidence.
- 18 The applicant has suggested that there would be no precedent set by allowing this proposal because the operative district plan is nearing the end of its life. However, the Committee notes that in requesting approval for this proposal, the applicant cited several existing undersized lots which were allowed under historic planning regimes as supportive evidence for their application.
- 19 Following this logic forward, the Committee finds the argument that no precedent will be set tenuous. They consider it reasonable to assume that if this proposal was allowed to proceed, it could be used by others to justify additional non-compliant development in this area regardless of whether another district plan was in place or not. Notwithstanding any alternative planning regime, the significant departure in character alone could be used to support other applications.

Relevant Policy Framework

- 20 The Committee accepts Mr Sycamore's assessment of the objectives and policies and agrees that the proposal is contrary overall to both the objectives and policies of the operative and proposed District Plans. The Committee recognises that there was no other expert planning evidence tabled but notes that the applicant did accept Mr Sycamore's assessment. The Committee agrees that the proposal fails the second limb of the gateway test set out in s104D of the Act.
- 21 With the proposed changes to the application regarding water and waste containment, Mr Sycamore suggests that the effects could be mitigated to the extent that the proposal passes the first gateway test of s104D by the narrowest of margins. The Committee is not convinced that the cumulative effects of the development are minor but accept Mr Sycamore's expert opinion in lieu of contrary planning evidence. On that basis, the Committee believes it may consider the application as allowed by s104D.
- 22 The Committee agrees with Mr Sycamore that a detailed assessment of the proposal in accordance with Part 2 of the Act is not necessary as there is no ambiguity, incompleteness or illegality in the District Plan. They are satisfied that the relevant District Plans have been prepared in accordance with Part 2 and the higher order planning instruments such as the Regional Policy Statement and the Proposed Regional Policy Statement.

Determination

- 23 Overall, the Committee feels that the potential negative effects of this proposal far outweigh the positives, especially in respect of the small lots sizes. They consider that intensification of housing in this area, at the scale proposed by this application, is expected to increase demand on water and waste beyond the capacity of the infrastructure. They also believe that the proposal is not supported by the policy framework of either the operative or proposed District Plans. Finally, the Committee has a reasonable belief that approval of these subdivision and land use consents could create a precedent which future requests would rely upon. The Committee respectfully declines the applications, pursuant to sections 104 and 104B of the Act.

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 Kirstyn Lindsay, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully



Colin Weatherall
Independent Commissioner
(Chair) Hearings Committee