

2 July 2020

Ms Sally Dicey & Mr Lloyd McGinty
26 Centre Road
RD 2
Ocean Grove
Dunedin 9077

Via email: sallydicey@ahika.co.nz

Dear Sally and Lloyd

RESOURCE CONSENT APPLICATION:

**LUC-2019-250
26 CENTRE ROAD
DUNEDIN**

The above application for the construction of a two bedroom dwelling for visitor accommodation and a family flat was processed on a limited notified basis in accordance with section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprised of Councillors David Benson-Pope(Chairperson), Christine Garey, and Mike Lord, heard and considered the application at a hearing on 11 June 2020.

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.

Following the conclusion of the hearing, a site visit was undertaken by the Hearings Committee on Thursday 18 June 2020.

The Committee has **granted** consent to the application on 18 June 2020. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by:
Ms Sally Dicey

Council staff attending were:
Phil Marshall (Advisor to Committee), Callum Riddle (Consultant Processing Planner), and Wendy Collard (Governance Support Officer).

Submitters in attendance included:
Mr Chris Valentine.

Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The principal issues of contention are as follows:

- Potential reverse sensitivity effects of constructing a two bedroom dwelling to be used as either a family flat or visitor accommodation within a rural environment which is actively farmed.
- Possible impacts of the new activity in terms of noise and parties and vehicles on the adjoining owner at 40 Centre Road who owns horses and other livestock.
- The policy implications of allowing a non complying activity to be established in a rural zone on a significantly undersize site.

Summary of Evidence

Introduction from Processing Planner

Mr Riddle outlined the application and noted that at 3.1661 ha site was well below the minimum size for a single dwelling in the Peninsula Coast Zone (20ha minimum). Nevertheless, General Residential 1 zoning is located close by across Centre Road with a minimum site size of 0.05 ha (500sqm). In addition, a number of other under size sites exist close by.

Mitigation of the new dwelling is catered for by a proposed planted bund shown on the site plan such that it will reduce the visibility of the structure from 40 Centre Road.

Positive effects include the link between an existing conservation planting programme underway on the site and the intention on the part of the applicant to utilise people using the visitor accommodation to help with planting and weed release activities.

Questions from the Committee to Mr Riddle related to the ability of proposed conditions to mitigate effects, the unproductive nature of the site from a traditional farming point of view and the relationship of the nearby Tomahawk Trust to the applicant. It was clarified that a maximum of four people would utilise the new dwelling.

With reference to paragraph 74 of the planner's report the Committee noted the unusual situation of the existing dwelling located in a rural zone being connected to a reticulated water supply. Furthermore the report from 3 Waters sanctioned the new dwelling tapping into this connection provided the supply was metered.

The Applicant's Case

Ms Dicey referred the Committee to her written statement circulated on 16 March 2020 prior to the Covid-19 lockdown. The statement responded to the concerns of Mr Valentine, the owner immediately to the north east, in his submission. It went on to comment on proposed conditions of consent in Mr Riddle's report and also to detail options for the proposed bund.

Ms Dicey spoke to her application and set out the background to development work on the property over a number of years. Her intention, along with Lloyd McGinty the other owner of the property, who was unable to be present at the hearing, is to plant out most of the property, in indigenous vegetation. Significant progress has been made to this end on a site which was rundown when purchased and is comprised of poor soils exposed to coastal winds. As a result, the land has very limited potential for normal agricultural production.

Policy 16.2.1.4 refers to visitor accommodation only being allowed in rural zones “where it supports productive rural activities or a significant conservation activity on the same property”. Ms Dicey pointed out this is not an “avoid” policy with its consequent implications stemming from case law in recent years. Nevertheless, significant conservation activity on a small property, such as the subject site, is a challenging threshold to meet but made somewhat more feasible by the nearby Tomahawk Smalls Beachcare Trust (Kareta Road) with which both Ms Dicey and Mr McGinty are associated.

When the new dwelling is occupied by visitors with an interest in ecological restoration the intention is to encourage them to take part in planting operations.

In answering questions from the Committee Ms Dicey said visitor accommodation guests would be able to take part in weed release operations as well as be involved in planting days on the property. Since the application for a family flat and visitor accommodation was made in May 2019 family circumstances have changed such that the dwelling is more likely to be used by Ms Dicey’s parents with visitor accommodation being secondary.

Evidence of Submitters

Mr Valentine of 40 Centre Road, being the adjoining property to the north east of the subject site appeared before the hearing in person.

His concerns related to the potential impact of his rural activities on the new dwelling (reverse sensitivity). He owns three horses with a stable near the common boundary.

The converse also potentially applies with noise from visitors and vehicles possibly upsetting the horses.

A further point is that the proposed dwelling is only 17.5m off the boundary with his property, somewhat less than the required 20m side yard as per Rule 16.6.10 of the 2GP. Because this rule also specifies a 40m separation between residential buildings, Mr Valentine contended that his flexibility in locating any new dwelling on his property is slightly reduced compared with the situation of the new dwelling being the required 20m off the boundary.

Mr Valentine also referred to the assessment of policies and objectives in Mr Riddle’s Sec 42A report. He was generally in agreement with this aspect of the report and was also happy with the proposed conditions of consent.

The Committee clarified with Mr Valentine that his main concern with the proposal was the potential noise generated by visitors and the consequent impact on his horses. He related details of a helicopter incident and also a noisy beach party which had upset his horses in the past.

As a result of a direct question from the Committee Mr Valentine explained he was not averse to the proposed dwelling being established for the purposes of visitor accommodation and as a family flat, provided proposed conditions of consent were implemented.

Processing Planner’s Review of Recommendation

In the light of evidence heard Mr Riddle confirmed his original recommendation to the Hearings Committee to grant the application.

He was happy to accept Ms Dicey’s suggestions to modify conditions in relation to the proposed bund and to exclude the existing dwelling and its normal residential activity from the restriction on the proposed dwelling to not hold large gatherings.

Answering a question from the Committee, Mr Riddle said that in his view the proposal was a true exception given the small size of the rural property, its limited ability to support agricultural production and the track record of indigenous planting on the site which was likely to continue by the owners and possibly by users of the visitor accommodation.

Applicants Right of Reply

Ms Dicey confirmed her acceptance of Condition 2 that the visitor accommodation aspect of the application could be used for up to 180 days per year.

With reference to paragraph 24 of her written statement Ms Dicey asked the Committee to approve the steeper bund option and grant the necessary earthworks consent as part of the overall approval, if indeed the Committee was of the view that the application should be granted.

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 Operative plan and in particular the following chapters of the Second Generation District Plan: 2 Strategic Directions, 16 Rural zone, and 6 Transportation.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, 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. In addition, a site visit was undertaken during the public-excluded portion of the hearing, the Committee inspected the site and this added physical reality to the Committee's considerations.

*That pursuant to Section 34A(1) and 104B and after having regard to 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 **grants** consent to a **non-complying activity** being the establishment of a building to carry out visitor accommodation and to be used for a family flat and to provide for a minor breach of the screening bund batter slope on the site at 26 Centre Road, Dunedin legally described as Part Section 13 Block VII and Part Section 852R Block VII Otago Peninsula Survey District (Record of Title OT387/222 and OT7D/997 respectively), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

The Committee considered that the proposed activity is consistent with the relevant objectives and policies of the Operative District Plan and the Second Generation District Plan.

The Committee believe that the proposal will not give rise to more than minor adverse environmental effects and satisfies both gateway tests contained in Section 104D of the Resource Management Act 1991. As such, the Committee were, therefore, able to consider the granting of consent to the proposal.

Effects on the submitter at 40 Centre Road were sufficiently mitigated by the design of the dwelling and the screening bund, along with proposed conditions of consent, such that Mr Valentine stated he was not opposed to consent being granted.

The Committee considers that the proposal is a “true exception” because the site is a small disjoint rural property bisected by Tomahawk Road. Furthermore, it is exposed to southerly winds and salt spray off the nearby ocean and has light sandy soil with poor fertility. As a result, it is considered not to be productive farmland. But importantly in terms of Policy 16.2.1.4 of the 2GP the site is subject to on-going conservation planting by the owners in association with the Tomahawk Smaills Beachcare Trust of which they are members. As a result granting the application will not threaten the integrity of the District Plan or establish an undesirable precedent for future applications.

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.

Right of Appeal

Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) A subdivision, unless the subdivision is a non-complying activity;*
- (c) A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of “boundary activity”, and refer to Section 95A(6) for definition of “residential activity”.)

For all other applications, 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 Mail Centre
Christchurch 8013

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

- The Dunedin City Council.
- The applicant(s).
- 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.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent will 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.

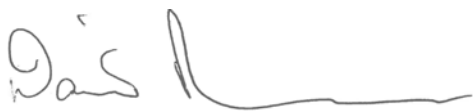
Monitoring

Section 35(2)(d) of the Resource Management Act 1991 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/activity, 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 inspection 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 dark 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-2019-250

Purpose: the establishment of a building to carry out visitor accommodation and to be used for a family flat and to provide for a minor breach of the screening bund batter slope.

Location of Activity: 26 Centre Road, Dunedin.

Legal Description: Part Section 13 Block VII and Part Section 852R Block VII Otago Peninsula Survey District (Record of Title OT387/222 and OT7D/997 respectively).

Lapse Date: 2 July 2025 unless the consent has been given effect to before this date.

Conditions

1. That the proposal shall be undertaken in general accordance with the application, site plans and the relevant details and information submitted with resource consent application, LUC-2019-250 received by Council on 21 May 2019 and the updated site plan received by Council on the 26 June 2020; except where modified by the following conditions:

Operational conditions for visitor accommodation

2. The property may be used for visitor accommodation for up to 180 days per year.
3. The property (inclusive of the residential unit and residential flat) shall be rented to no more than one group of persons at any one time.
4. The residential flat shall only have a maximum number of four (4) guests staying overnight
5. Regarding the use of outdoor space:
 - a. The use of any outdoor areas is prohibited by paying guests between the hours of 10.00pm to 8.00am, unless arriving to or leaving the unit.
 - b. Two (2) signs (minimum A4 size) shall be erected on site to remind guests that they are in a quiet rural area, and that the use of outdoor areas is prohibited between the hours of 10.00pm to 8.00am. One sign shall be installed in the kitchen of the unit and a weatherproof sign (e.g. laminated) shall be installed within the outdoor area.
6. The consent holder shall ensure that all vehicles associated with the short-term Visitor Accommodation are parked within the designated spaces on site and shall ensure that no coaches are to service the authorised activity.
7. The consent holder shall maintain a record of all tenancies in the form of a register containing the number of occupants and the number of days/nights of occupancy. This register shall be made available for inspection by the Council at all times and be held for a minimum of 5 years after an occupancy is completed.

Please note: While the consent holder is responsible for there being an up to date register, the register may be completed by a letting agent / property manager.

8. All rubbish and recycling shall be disposed of appropriately. Where there is kerbside collection, rubbish and recycling shall only be placed on the street the day of or day prior to collection.
9. Large gatherings of non-tenants or parties associated with the use of the unit authorised by this consent are strictly prohibited. This condition does not affect activities carried out by the occupants of the primary residential dwelling on site.
10. No stereo system will be available in the unit except for speakers with a maximum rating of 10 Watts. This condition does not apply to the primary residential dwelling.

Transportation

11. Should parking for more than five vehicles be provided on the site, manoeuvring space shall be provided that is suitable for an 85th percentile design motorcar.
12. The vehicle access shall be a minimum 3.5 metres formed width, hard surfaced from the edge of the seal on Centre Road to a distance not less than 5.0m inside the property boundary and be adequately drained for its duration.
13. Any damage to any part of the road formation as a result of the construction works shall be reinstated at the applicant's cost.
14. The maximum width of the vehicle crossing shall not exceed 6 metres.

Infrastructure

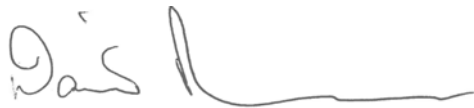
15. An "Application for Water Supply" shall be submitted to the Dunedin City Council for approval for change of use of the water supply to the property. Details of how this property is to be serviced for water shall accompany the "Application for Water Supply".
16. An RPZ boundary backflow prevention device shall be installed on the water connection, to the satisfaction of the 3 Waters (refer to advice note).

Advice Notes

1. *The vehicle crossing, between the road carriageway and the property boundary, is within legal road and will therefore require a separate Vehicle Entrance Approval from DCC Transport to ensure that the vehicle crossing is constructed/upgraded in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this approval is not included as part of the resource consent process).*
2. *All aspects of this development shall be compliant with Parts 4, 5 and 6 of the Dunedin Code of Subdivision and Development 2010.*
3. *Detail of the water supply application process can be found at <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.*
4. *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>.*

5. *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.*
6. *Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the work.*
7. *In addition to the conditions of a 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.*
8. *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.*
9. *It is the consent holder's responsibility 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.*
10. *This consent will lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.*

Issued at Dunedin on 2 July 2020

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David Benson-Pope
Chair
Hearings Committee

Plan 1 of 2





Starting Address: 0x00000000

5

Finished Floor Level (FFL) shall be:

- a) For areas level with or above the road, no less than 150 mm above the road crown or at least one cross section through the building and machery
- b) For areas below the road, no less than 150 mm above the lowest point on the site boundary

SLIP Resistance:
Minimum coefficient for rain: across scales = 0.4
(4 g force down)

Broom (class 5 or 6) or wood float (class 12)
from class 0: 0.65 - 0.85
Coated or sand/silica impregnated zone: 0.55 - 0.90
Exposed sand/silica zone: 0.4 - 0.70
Applied: 0.6 - 1.20
Dry concrete joints: 0.45 - 0.70
Patched surface (across profile): 0.35 - 0.60

Landings to Access Ways:
Landings to be provided to all external doors with rise
fits all max 190mm.
Provide min 1,530 ball away from the foundation to
steel-working areas.

Cautionary Notes: BUILDING CONTRACTORS TO ASSESS SITE TO ENSURE COMPLIANCE WITH SETBACKS AND HEIGHT IN RELATION TO ADJACENT PROPERTIES. URGENT DESIGN LTD. WILL NOT ACCEPT LIABILITY FOR ANY NON-COMPLIANCE IF SITE IS NOT SURVEYED BY A REGISTERED SURVEYOR PRIOR TO COMMENCEMENT OF CONSTRUCTION. PROPOSED DESIGN IS BASED ON THE BOUNDARY AND LEVELS INFORMATION PROVIDED.

[illegible]

Student Contact:

- Staff will be in accordance with the Council's General and Student Conduct Guidelines. Initial steps to intervention will be taken as soon as a concern is identified.
- All staff members will be trained in the following:
 - Recognizing common student situations that are to be reported and managed only
 - Interventions that can be used
 - Procedures for handling a student from meeting one student or reporting a problem
- All student group registration labels for immediate building will be pre-approved during the building phase
- All student group registration labels will be made available prior to commencement of activities
- Groupings of day and overnight are to be covered with frequent monitoring
- Student wear development to be connected to the new electronic system as soon as card reading is up and running to monitor

Lot No.: Pt Section 13
DP No.: BLK VII Orango Peninsula SD
Site Area: 1.47 Ha
Gross Plan Area: 60.0m²
(incl. covered areas)

Council: DuneIn City Council
Planning Zone: TBC

Client Name: Sally Darcy
Address: 26 Center Road
Durand, MI 48829

Site Plan				Sheet
Client:	B. Gargan	Engineer:	Steve	1
Project:	Barling	Project:	1	
Example:	1	Project:	1	

DO NOT SCALE off drawings. Cross reference all drawings, supporting documents and specifications. Any identified discrepancies must be clarified with the designer prior to the commencement of any works. No site works or other construction is to start before Building Consent is unconditional.

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Updraft Design Ltd
dan.updraftdesign@gmail.com

