

29 February 2016

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Tim and Anna Read
C/- T L Survey
Attention: John Willems
P O Box 901
DUNEDIN 9054

Dear Tim and Anna

RESOURCE CONSENT APPLICATION LUC-2015-471
22 CLEGHORN STREET
DUNEDIN

The above application for land use consent was processed on a limited notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee comprising Councillors Andrew Noone (Chairperson), Lee Vandervis and Andrew Whiley heard and considered the application at a hearing on 9 February 2016.

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 carried out a site visit on Friday 5 February 2016. The site visit included the subject site and the property at 26 Cleghorn Street.

The Committee has **granted** consent to the application on 29 February 2016. 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:

- Tim and Anna Read (Applicant)
- John Willems (Consultant Surveyor)

Council staff attending were:

John Sule (Advisor to Committee), Melissa Shipman (Processing Planner), Barry Knox (Landscape Architect) and Wendy Collard (Governance Support Officer).

Submitters in attendance were:

- Tessa Barringer (Submitter)
- Cameron Hodgson (Legal Advisor for Tessa Barringer)
- Mike Moore (Landscape Architect for Tessa Barringer)

Procedural Issues

No procedural issues were raised as the outset but a procedural issue relating to the provision of the applicant's expert evidence to the submitter's agent emerged during the hearing. It became apparent that the submitter's team did not have the applicant's evidence that promoted a change in the position of the dwelling. The Committee enquired into the process and Wendy Collard Governance Support Officer advised the Committee that the availability of the applicant's evidence on the website was outlined in a covering letter provided with the agenda documents. This letter was provided to the Committee. The Committee advisor noted that with the recently introduced pre-circulation requirements there was no obligation on the Council to directly circulate the evidence only to advise that the evidence is available from the Council.

The potential prejudice issues relating to this matter were discussed by the Committee and it was eventually accepted by the Committee that a delay in the hearing was not required. The Committee noted that the compromise location circulated in the applicant's evidence was a location between that originally sought in the application and the location sought by the submitter in promoting a no build zone. This means that the effects were a gradation of those that had been assessed and could be readily reviewed by the landscape experts.

Mr Moore representing the submitter indicated that he was comfortable with assessing the impacts of the compromise option despite not seeing it before and he did not need additional time. It was also accepted by Campbell Hodgson that the submitter's position that the consent be refused or if granted that a proposed no build zone is established was unlikely to be altered by the compromise option provided in the applicant's evidence.

The Committee Advisor also advised that despite the required pre-circulation of evidence there would always be the prospect of minor changes being discussed if additional mitigation was required to address adverse effects. Having considered the matter the Committee determined that the Council had arguably met its requirement to advise the submitter though the cover letter attached to the agenda. In any event it decided there was no prejudice to the submitter that warranted a delay in hearing the matter.

Principal Issues of Contention

The principal issues of contention are as follows:

- The characteristics of the existing environment.
- The degree and acceptability of adverse effects on amenity values enjoyed by the neighbouring site at 26 Cleghorn Street.
- The degree and acceptability of adverse effects on Landscape and rural amenity values in the wider area.
- The suitability of proposed landscaping in relation to the difficult environmental conditions on the site.

Summary of Evidence

Introduction from Processing Planner

The processing planner Melissa Shipman spoke to her report giving an overview of the project before discussing notification and the submissions received. Ms Shipman noted that the proposal was to establish a residential activity on an undersized rural zoned site at 22 Cleghorn Street that was 8032m² in area. Ms Shipman noted that the applicants intended to establish a dwelling on the site that was 5.5m in height and 155m² in area. An existing access would be used for vehicle to access the site.

Although the site was significantly undersized for the Rural zone, Ms Shipman noted that Cleghorn Street was rural residential in character and that there were houses in the area located on similar sized sites. She noted that the intention of the 2GP was to rezone the site from Rural to Rural Residential. She advised the Committee that the site would be still well under the 2ha minimum for the Rural Residential zone even if rezoned.

Having regard to the existing environment Ms Shipman considered that it was appropriate to approve consent noting that in her view it would not result in a plethora of like applications. Ms Shipman considered it was possible to mitigate the effects of the proposed dwelling on the neighbouring site at 26 Cleghorn Street by establishing a location for the dwelling further lower down the slope at the location recommended by the Council's Landscape Architect. Ms Shipman recommended the application be granted subject to conditions to manage effects.

The Applicant's Case

John Willems commenced the application presentation by identifying errors with the processing planner's report that needed to be corrected. Mr Willems took issues with parts of Mrs Moore's Landscape report noting that there was sufficient soil to establish landscape planting on the site and that noise issues from the residential activity were overstated.

Anna Read spoke to the Committee outlining the proposal through a power point presentation. She explained the reasons for the selection of their preferred building site. Ms Read then commented on its degree of visibility from various public locations referring to the viewing poles they had erected on site. She discussed the location the submitter Ms Barringer had promoted through a no build zone and noted that this location would lose sun in winter and result in additional earthworks and engineering costs. They considered this location was unsuitable. She noted that they had consulted with Ms Barringer but this had not been successful. She requested that the Committee provide some flexibility for the design and that the consent to establish a residential activity be granted.

The applicant's responded to question from the Committee on height, colour controls and landscaping.

Evidence of Submitter (Summary)

Cameron Hodgson tabled and spoke to his legal submissions. Mr Hodgson argued that the proposal as notified did not pass either limb the Section 104D gateway test as the effects would be more than minor and as it was contrary to the objectives and policies of the operative district plan. He argued that moving the building platform would mitigate the effects and if consent was to be granted a no build zone secured through a covenant on the title was required as well a landscape plan. Mr Hodgson provided a detailed analysis of the objectives and policies concluding that the proposal was contrary to the objectives and policies for the Rural zone. Mr Hodgson responded to questions from the Committee on a range of matters including the objectives and policies assessment, the proposed height of planting and the character of the area.

Tessa Barringer spoke to her detailed written submissions. Ms Barringer outlined how she came to live in the area and the qualities of the environment she valued. She outlined her concerns about the adverse effects on her amenity values noting her concerns about impacts on openness, and visual and aural privacy. Ms Barringer identified the areas of her site where the proposed dwelling would be visible from and the likely impacts on her environment. Ms Barringer described her experience with establishing plants on her site due to the difficult environmental conditions and she noted that the applicant's plans for landscaping, orchards and garden were unlikely to be successful and at odds with the reality of the site. She described her experience of the consultation with the applicant's noting that in her view they showed little willingness to negotiate.

Ms Barringer opposed the development but noted that if consent was to be granted then at least it should be moved into the North East corner of the section in line with the no build zone attached to her submission.

In response to questions from the Ms Barringer noted that she had not seen the proposed compromise option and she was concerned about the breakdown in the process. She noted that the compromise of twisting it slightly and moving it a few meters was neither here or there from her perspective and did not address her concerns. She noted that if the application was to be granted that a no build zone should be established.

Ms Barrington responded to a number of questions regarding the environmental conditions on her site outlining her experience with her site and the difficulty in establishing plants.

Mike Moore spoke to his pre-circulated evidence and responded to questions from the Committee. Mr Moore noted that an important area of concern for Ms Barringer was the entrance way to her site. He noted that site conditions meant that establishing screening would take time.

Mr Moore responded to a number of questions regarding the poles on the site and his understanding of their purpose. Mr Moore confirmed that in his opinion his Figure 9 was the degree of mitigation required to ensure that effects were minor. He indicated that although he had not seen the compromise location prior to the hearing he could respond to the difference in effects. He noted that in his view it would only be a small positive improvement. He discussed how, with small sites, small changes could be important and in his opinion the compromise did not move the dwelling far enough down the slope to be effective. He confirmed that his Figure 9 identified the appropriate level of mitigation necessary to ensure the effects of the proposal on rural character and amenity and landscape values were minor.

Council Officers Review

Barry Knox responded to questions from the Committee. Mr Knox noted that in his view that shifting the house to a position lower on the slope would reduce impacts on landscape values. In response to a question from the Committee regarding the effects of the location that was originally proposed he noted that the original location was not nearly as good as the compromise or the submitter's proposal. He considered the choice should be between the compromise position and the submitter's proposal as the effects would be better mitigated at these locations.

Processing Planner's Review of Recommendation

Ms Shipman stated that she wished to maintain her recommendation to grant consent to the proposal subject to conditions. She supported relocation of the dwelling to a location that would adequately mitigate effects as the site is within a high visibility landscape area.

Applicant's Right of Reply

Mr Willems indicated that the applicant's alternative option for siting of the residential unit was an appropriate response to landscape and character issues and should be approved. The submitter's proposal for siting the dwelling did not meet the Read family's needs and it was not required to achieve an appropriately level of mitigation. He reiterated his view that the Cleghorn Street area is rural residential in character. In relation to the height of dwelling Mr Willems noted that the applicants had reduced the footprint of the building to manage effects and the height was necessary to provide storage in the roof space.

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, 6 Rural Zones, 14 Landscape and 20 Transportation. Consideration was also given to the objectives and policies of the proposed Second Generation District Plan. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the 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 principle issues in contention. The main findings on the principle 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 prior to the hearing. The Committee inspected the site and submitter's property this added physical reality to the Committee's considerations of the evidence presented at the hearing.

*That, pursuant to Sections 34A and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying activity** to establish a Residential Activity on the site at 22 Cleghorn Street, Dunedin, being that land legally described as Lot 1 DP 22220 held in Certificate of Title OT14A/88, subject to the conditions imposed under Section 108 of the Act as shown on the attached certificate.*

Reasons for this Decision

The Existing Environment and the Permitted Baseline

- 1 The Committee agreed with Ms Shipman and the landscape evidence from Mr Moore and Mr Knox that the Cleghorn Street area is more rural residential in character than rural. Although the enclave is zoned rural, the size of the sites, the location and separation of dwellings and the typical utilisation of land within the enclave means that the area has a rural residential character rather than a rural character.
- 2 The Committee considered the application of the permitted baseline to this proposal and agreed with Ms Shipman that application was limited due to the undersized nature for the site and its location within a landscape overlay. The Committee decided that application of the permitted baseline is appropriate in this case although it was limited in scope.
- 3 The Committee noted that a farm shed could be established within 50m of the dwellings at 20 or 26 Cleghorn Street if the shed dwelling was 50% smaller than the dwelling. This shed could be established as close as 6m to the property at 26 Cleghorn Street if it was not used to house animals. Amenity planting or planting of orchard trees on the site would also be a non-fanciful permitted activity. Forestry is considered fanciful on such a small site and forestry and shelterbelts would likely trigger a requirement for a resource consent for shading of curtilage.

Effects on Rural Amenity Values and Rural Character

- 4 In regard to effects on amenity, the Committee noted that effects on the neighbour at 26 Cleghorn Street was a primary effects consideration. The effects on wider rural amenity values and character were not considered significant given the rural residential character of the area. The Committee considered the evidence it had received on four proposed locations for the residential unit being:
 - the original position of the dwelling as notified,
 - a compromise position proposed by the applicant'
 - The location promoted by the processing planner'
 - The submitter's proposal for a no build zone that would result in the unit being located further down slope

The Committee noted that the locations presented a gradation in the degree of effects and the effects would decrease as the proposed dwelling moved further down the slope.

The Committee considered the issues raised by Ms Barringer in relation to effects on spaciousness and privacy but determined that the effects on amenity values were minor at the compromise location. There would be increased domestication and a new residential structure, but this structure would not be out of place given the Rural Residential character of the setting. The proposed house site is lower in elevation and would be effectively screened by vegetation from the living areas at 26 Cleghorn Street. The dwelling would be evident from the driveway and in front of the garage as but dwelling houses are similarly visible on road approaching the driveway and landscape mitigation would ensure that these impacts reduced over time.

The Committee decided that the revised location promoted by the applicant (the compromise option) was acceptable as the effects arising from would be minor.

Effects on Landscape Values

- 5 The dwelling being proposed is relatively modest in scale at 155m² and it will not be sky-lined. It is located below the submitter's dwelling which is highly visible as it is sky-lined and light in colour. While it accepts the argument that this should be used as an excuse for further degradation of landscape values, the Committee considers that in the context of this existing dwelling, a baseline that allows construction of a shed, and with mitigation in place (colour scheme, height restrictions and landscaping) that the impacts of the proposed residential activity would be minor. Mr Moore suggests that on a small site minor changes are important but that the proposed compromise was insufficient to address adverse effects. Mr Knox was less definitive suggesting and the effects of the compromise option would be minor to moderate. The Committee considered that the effects on landscape values are minor at the compromise location with appropriate mitigation in place. In that regard, it accepts that more effort is required in relation to landscaping proposals for the site given the difficulties of the environment and that conditions are appropriate to ensure effective landscaping is established. In addition conditions to secure an appropriate colour scheme, restrict the residential curtilage and height are all necessary to ensure the effects are minor. A covenant is not required in the Committee's view.

Objectives and Policies

- 6 The Committee considered the differences in the evidence it had received on the objectives and policies of the operative plan. The Committee noted the position of the applicant's legal counsel that a number of objectives and policies were effects based. It also noted counsel's advice to the Committee that the existing environment was not a consideration for the assessment of objectives and policies. On that matter the Committee considers that the effects of a proposal are not assessed in isolation and the existing environment is therefore a consideration for any effects assessment. If the objectives and policies are effects based it follows that the existing environment must indirectly be a consideration in the assessment of those objectives and policies that are related to effects. On that basis the Committee preferred the overall conclusion of Ms Shipman. The Committee considers that the proposed activity is inconsistent with the relevant objectives and policies of the operative plan but it is not contrary to them largely because the proposal is not further fragmenting productive rural land and as the character of the site and its environs is rural residential rather than rural. Despite the proposed Second Generation Plan zoning appearing to be more reflective of situation on the ground, the Committee accepts that it can only give the objectives and policies and zoning of the proposed plan limited weight as they have only recently been notified.
- 7 The Committee considers that the proposal complies with the objectives and policies of the Regional Policy Statement for Otago.

Other Matters

- 8 The Committee considered whether the proposal is a "true exception". It noted that the site is clearly not rural in character and that the rural residential character evident in the area was the result of dwelling established on titles created by a subdivision in 1989. It also noted that further subdivision of land within the enclave is unlikely even under revised second generation plan zoning provisions. The Committee considers that granting consent will not establish an undesirable precedent for future applications that would lead to an undermining of the integrity of the District Plan.

Determination

- 9 The Committee consider that overall the proposal will not give rise to more than minor adverse environmental effects with appropriate effects mitigation in place. The Committee also consider that the proposal is not contrary to the operative or proposed plans. The Committee therefore has determined the proposal satisfies both the effects and the objectives and policies gateway test 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.
- 10 The Committee has 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 John Sule, 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 activity, this consent will require two inspections.

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 black ink, appearing to read "Andrew Noone".

Cr Andrew Noone
Chair
Hearings Committee

Application Type: Land use Consent

Application Numbers: LUC-2015-471

Location of Activity: 22 Cleghorn Street

Legal Description: Lot 1 DP DP22220 (Computer Freehold Register OT14A/88)

Lapse Date: LUC-2015-471 shall lapse on 1 March 2021.

*That, pursuant to Sections 34A and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying activity** being the establishment of a Residential Activity on the site at 22 Cleghorn Street, Dunedin, being that land legally described as Lot 1 DP 22220 held in Certificate of Title OT14A/88, subject to the conditions imposed under Section 108 of the Act, as follows:*

- 1 The residential activity shall be established generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 7 October 2015 and the evidence provided for the consent hearing except where modified by the conditions below:*
- 2 The proposed residential unit shall be sited at the location identified on the plan supplied with the applicant's evidence entitled "Proposed Position by Applicants" that shows a position 13m from the boundary with 26 Cleghorn Street and 51 metres from the front boundary with Cleghorn Street. This plan is attached to this certificate.*
- 3 Any new ancillary residential buildings and residential structures shall be established within 30m of the residential unit on the site and shall be located no closer to the boundary with 26 Cleghorn Street than the residential unit.*
- 4 The residential unit and any other building established on the site shall be finished in colours which will unobtrusively blend with the colours of the surrounding landscape. Roof colours shall have a reflectivity value of no more than 10% and the main cladding colour shall have a reflectivity value of no more than 30%. The final colour scheme for the residential unit shall be submitted to the Resource Consents Manager for approval prior to construction commencing on the unit.*
- 5 The residential unit shall not exceed 5.5 metres in elevation from the existing ground level. Any protrusions thought the maximum height specified shall be limited to chimneys, arials and ventilation equipment not exceeding 1m² in area and not extending greater than 2m above the specified height.*
- 6 Prior to lodgement of a building consent for development of a residential unit on the site a landscape plan prepared by a suitably qualified landscape architect shall be submitted to the resource consents manager for approval. The landscape plan shall identify planting appropriate to the character and conditions of the site and be designed to soften the visual impact of the house from surrounding view points and adjacent properties. In relation to the site at 26 Cleghorn Street the landscaping shall be designed to provide screening while minimising shading. The plan shall include the following:*
 - Details of species and planting densities,*
 - Pest Control measures to protect plantings,*

- *Appropriate measures necessary to secure successful growth of plantings including windbreaks and irrigation if these are necessary.*
- 7 *Landscaping shall be established as detailed in approved landscape plan within 6 months of its approval. Any dead or moribund trees shall be replaced immediately. The landscaping is to be maintained in perpetuity in general accordance with the approved Landscape Plan.*
 - 8 *Any shelterbelt planting along the southern third of the site shall be clustered and follow the contour lines of the site.*
 - 9 *The vehicle access shall be a minimum formed width of 3.5 and a maximum formed width 6.0m and be adequately drained for its duration.*
 - 10 *All retaining walls over 1.5m, or surcharge/slope, including terracing, require design, specification and supervision by appropriate qualified person/s.*
 - 11 *Any earth fill over 0.6m thick supporting foundations must be specified and supervised by a suitably qualified person in accordance with NZS 4431-1989 Code of Practice for Earthfill for Residential Development.*
 - 12 *Slopes may not be cut steeper than 1:1 without specific engineering design and construction.*
 - 13 *Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.*

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 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. 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 legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation).
7. In the event of any future development on the site, Council's Transportation Department would assess provisions for access, parking and manoeuvring at the time of resource consent/building consent application.
8. Earthworks details have not been assessed as part this consent. If any earthworks exceed the permitted activity thresholds specified in the relevant District Plan/s then a further resource consent will be required.

9. Code of Subdivision
Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
10. Fire-fighting Requirements
All aspects relating to the availability of the 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.
11. Erosion and Sediment Control
The following documents are recommended as best practice guidelines for managing erosion and sediment-laden run-off:
- Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
 - Dunedin City Council "Silt and Sediment Control for Smaller Sites" (information brochure).
12. Private Drainage Matters
Private drainage issues and requirements (including any necessary works) are to be addressed via the building consent process.
- 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.
 - For sites level with or above the road, the finished floor level of any building is to be a minimum of 150mm above the crown of the road.
 - For sites below the road, the finished floor level is to be no less than 150mm above the lowest point on the site boundary. 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 29th Day of February 2016



Andrew Noone
Chair
Hearings Committee

Appendix 1: Copy of Approved Plan/s for (insert consent number):
(Scanned image, not to scale)

3. Proposed position by applicants

