

11 August 2020

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Dear Kwok and Kit

RESOURCE CONSENT APPLICATION:

**LUC-2019-122
27 BELMONT LANE
DUNEDIN**

The above application to authorise the use of the property at 27 Belmont Lane for visitor accommodation 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 Friday 24 July 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.

Prior to the hearing, the Committee individually visited the site to refresh their knowledge of the location.

The Committee has **granted** consent to the application on 24 July 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:
Mark Miller, General Manager, Edinburgh Realty.

Council staff attending were:
Campbell Thomson (Senior Planner/Committee Advisor), Robert Buxton (Consultant Planner), Logan Copland (Planner, Transport), Karen Heathman (Environmental Health Officer) and Wendy Collard (Governance Support Officer).

A Submitter in attendance was:
Albert Borren

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Procedural Issues

No procedural issues were raised.

Principal Issues of Contention

The principal issue of contention was the access to the property via Belmont Lane. The main focus of the submissions received, and the evidence presented related to the traffic associated with guests using the private lane.

Summary of Evidence

Introduction from Processing Planner

The Consultant Planner, Mr Buxton, spoke to a summary of his report, giving an overview of the proposal and planning considerations, and the conditions recommended in the report.

Mr Buxton advised consent was sought for the operation of visitor accommodation for up to eight guests, with bookings made via websites such as Airbnb and Booking.com. He noted that the use of the site was managed by a real estate and property management company, Edinburgh Realty. He considered the dwelling and grounds were large enough for 8 guests, and that there was good separation between the dwelling and neighbouring dwellings. He commented that driveways separated the outdoor living area from the two homes closest to this area.

Mr Buxton provided an overview of the site and location, noting that Belmont Lane was a shared driveway extending from the end of Rochester Terrace, Musselburgh. He confirmed that this was a private access comprising a combination of rights of way. He noted the legal width was 8 metres for most of the length, narrowing to 4.5m before reaching the subject site, and the formed driveway was generally 3 to 5m wide. He observed that some properties adjoining Belmont Lane have access from Moana Crescent.

Mr Buxton commented on the permitted baseline, being effects of activities allowed by the District Plans. He noted that this included a home stay or bed and breakfast accommodation with up to five guests, activities such as a home office, or a retail business, where such activities are secondary to the primary use of the property as a residence. He commented on the traffic movements of such activities compared to use of the property solely as a private dwelling.

Mr Buxton commented on the adverse effects of the proposal in relation to access and amenity. He considered the traffic generated by the proposal would be no different to a dwelling. He noted the concerns of submitters about vehicle movements associated with guests unfamiliar with the location, but considered this applied to other persons visiting the area. He commented on the measures proposed by the applicant to manage this issue. Mr Buxton considered any effects on noise could be similarly managed. Mr Buxton addressed the concerns of submitters about loss of community and observed that operation of a visitor accommodation would not necessarily erode community engagement and may potentially have positive effects on the community.

Mr Buxton addressed the recommended conditions, noting changes he suggested should be made to conditions 5 and 7. This was to ensure the visitor accommodation would be managed by a person resident in the Dunedin urban area, and that the restriction on the type of vehicles in condition 3 is incorporated in the Site Management Plan. Mr Buxton then responded to questions from the Committee regarding the status and use of the access to the property and proposed restriction on vehicles of guests. Mr Buxton advised that the Council had the legal right to control what happens on the subject site in terms of types of vehicles. The restrictions proposed applied to guests using the accommodation.

In relation to a question concerning the costs of maintaining the rights of way, Mr Thomson noted that this was a civil matter provided for under the Property Law Act. He noted that the Act sets out rights and obligations with respect to a right of way easement, and the recovery of costs should one owner or user damage the right of way. He advised that there is an ability for the parties to add additional conditions,

but in the absence of any formal agreement for maintenance, the provisions of the Act apply. Mr Buxton noted that such conditions go beyond what the Council could impose.

The Applicant's Case

On behalf of the applicant, Mr Miller spoke to the application. He commented on the Airbnb market in Dunedin and the usage of the visitor accommodation on the subject property. He advised that before the impact of the COVID-19 pandemic, occupancy of the accommodation had been at around 30 to 40 %. Mr Miller commented on the local of Airbnb activity in the locality, and noted other visitor related activity on Belmont Lane.

Mr Miller commented on the video used to advise guests about the accommodation access and restrictions on site. This was shown to the Committee during the hearing, and Mr Miller clarified the background to its production. He commented that the issues with speed on the right of way and parking on site had been addressed by the applicants. He observed that with campervans users there can be issues with non awareness of the driving and parking limitations. However, he expressed concerns that the smaller people movers may be excluded, as this is often how families travel.

Mr Miller commented on the management of the property and measures to respond to issues including noise. He advised that he was happy with the recommended conditions, although would need to confirm details of the restrictions with the owners. He clarified the booking process for the accommodation, noting that enquiries come from the website channels such as Airbnb and Expedia, and through their own website. The information video is sent with either the enquiry or confirmation of the booking.

Mr Miller responded to questions from the Committee about the management of the visitor accommodation, and the occupancy of the site. He advised that the agent either meets the guest for a key handover, or instructions are given for the use of the key lockbox on site. Mr Miller advised that guests stayed for a minimum of two nights, but the average was four. He commented that an Edinburgh Realty staff member goes to the house and checks the property between stays, removing any rubbish, and then a cleaner comes in.

In regard to the guest demographics Mr Miller indicated that generally the accommodation was used by either families or couples, depending upon whether the reason for the visit is a tour holiday, or travel for a sporting or concert event. He indicated that summer was the busiest time and when major concerts or events were in Dunedin. He advised that prior to the COVID-19 lockdown between a third to a half of guests were international visitors.

Mr Miller acknowledged the assistance he had received from a Council compliance officer, Peter Woods, in addressing the consent requirements required for 30 properties in the Dunedin area, with the majority having already been consented. The situation at 27 Belmont Lane had been more complex due to the number of neighbours, however, the property owner was keen to continue with the application. Mr Miller noted that if the property was tenanted then the neighbours would not say regarding the use of the site. Mr Miller responded to further questions about the occupation of other properties in the vicinity of the subject site, and alternative usage of the subject property. Mr Miller commented on demand for rental accommodation, and noted other accommodations needs managed by Edinburgh Realty, including short term visitor accommodation.

Evidence of Submitters

Mr Borren spoke to his submission and indicated that his main concern was traffic on Belmont Lane. He noted that only properties with boundaries to the subject site were asked to sign affected parties forms. He advised that there were 19 owner occupied properties with access from Belmont Lane and most owners were an older demographic, and long term residents. He commented that the average ownership is in excess of 20 years and a very steady solid community.

Mr Borren commented on the width of Belmont Lane, noting that the access formation narrows from the property at No 26, with the use of the easement restricted due to significant trees. He commented on safety concerns regarding the intersection of Rochester Terrace with Musselburgh Rise, and the corner from Rochester Terrace into Belmont Lane. He expressed concern that the increase of traffic from guests does affect the amenity of residents as the drivers are not familiar with the Lane.

Mr Borren took issue with the permitted baseline assessment as he noted No 27 is no one's home at present, and commented that the owner had purchased the property with no intention to live there. He expressed concern that the property is looked after by an agency who is promising things but the owner could change this at any time.

Mr Borren commented that the application should have been a full notified consent and that all residents on Belmont Lane should have been able to submit. He noted that he did have concerns with short term or long term rentals and would like a condition to be included if consent is granted that stated rental is for a period no less than 7 days. He also had concerns about security regarding the use of Belmont Lane by non-residents.

The Chair asked staff to confirm the limited notification was appropriate. Mr Thomson advised it was and noted that the determination of affected parties must take into account effects that are permitted by the plan. The limited notification was in relation to adjacent properties, as potential effects were greater than for other users of Belmont Lane. Mr Buxton noted the properties past No 23 were considered affected as that is where the access narrows.

In response to questions from the Committee Mr Borren commented on the limitations on vehicle access within Belmont Lane, and usage of the Lane by visitors. He commented that Rochester Terrace is a Council road, but with Belmont Lane all residents own the Lane and have as much entitlement of the Lane and should have been notified. Mr Borren advised that he was not concerned with noise on the site.

Evidence from Technical Officers

Mr Thomson confirmed that a water meter could be required under the Councils Water Bylaw because of the commercial use of the site.

Mr Copland, the Planner, Transport spoke to his memorandum and responded to questions. He advised that his traffic assessment would be no different if the property was tenanted or used for the current activity. He indicated that the issues with heavy vehicles would be no more than what could occur with a permitted activity. He advised that speed appropriate on any road depends upon the formation of the road, what is happening on the road and on the sides of the road. Given the number of allotments on Belmont Lane it is expected that there would be pedestrian activity on the road and a lower speed limit is recommended.

Mrs Heathman, the Environmental Health Officer, spoke to her memorandum and commented on the conditions that are mentioned in the video. She advised that noise control responds to noise complaints with a 24 hr service and if noise is excessive at any time it could result in enforcement action. She advised that the determination of excessive noise was a matter of judgement by the officer attending the complaint. She indicated the enforcement action required would depend upon the noise and how long it was occurring.

Processing Planner's Review of Recommendation

Mr Buxton commented on the likelihood of conflicting vehicle movements on Belmont Lane. He noted that busy times for traffic on the lane are likely to be at 8 am or after work, and that Guests arriving for the first time at site are unlikely to be arriving during these busy times. Mr Buxton confirmed that the proposed review condition provided for an ability to review the conditions or add another condition regarding both noise and traffic issues. He noted the advice notices gave further guidance. His recommendation was unchanged.

Applicants Right of Reply

Mr Miller advised that management of noise would be something that would worked on, but he noted there had been no complaints against this property. In regard to the submitters concerns about the owners intentions for occupancy, he commented that the owners were entitled to use the property as they see fit. Mr Miler requested that the consent 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 following sections of the Proposed Second Generation Dunedin City District Plan: 6 Transportation, 9 Public Health and Safety and 15 Residential Zones.

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.

*That pursuant to Section 34A(1) and 104C and after having regard to Section 104 of the Resource Management Act 1991, and the Operative Dunedin City District Plan 2006 and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being visitor accommodation on the site at 27 Belmont Lane, Dunedin, legally described as Lot 1 Deposited Plan 9619 (Record of Title OT414/58), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

The Committee believe that the adverse effects of the proposal will be minor. The Committee are satisfied that the effects of the visitor accommodation at 27 Belmont Lane were similar in nature and scale to effects that could be anticipated with the use of the dwelling for permitted residential activity.

The Committee note that residential activity on the property could include the additional effects of a homestay or other business activity within the limitations of working from home. However, regardless of this, the Committee are not convinced that there is substantive evidence that the traffic movement

associated with the visitor accommodation is causing an adverse environmental effect that cannot be mitigated, given the small number of guests accommodated and measures available to the applicant to inform and manage the behaviour of guests. Similarly, the potential effects of noise are considered to be little different to that for permitted residential activity.

The Committee are satisfied that provided the recommended conditions of consent are implemented, the adverse effects of the proposed activity can be adequately mitigated.

The Committee considered that the proposed activity is consistent with the relevant objectives and policies of both the Dunedin City District Plan 2006 and the Proposed Second Generation Dunedin City District Plan.

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

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.

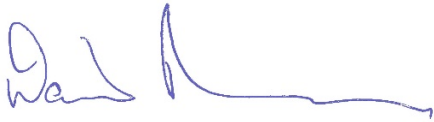
Monitoring

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

David Benson-Pope
Chair
Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2019-122

Purpose: Visitor Accommodation

Location of Activity: 27 Belmont Lane, Dunedin,.

Legal Description: Lot 1 Deposited Plan 9619 (Record of Title OT414/58).

Lapse Date: 11 August 2025, unless the consent has been given effect to before this date.

Conditions

- 1. The proposed activity must be undertaken in general accordance with the information provided with the resource consent application received by the Council on 7 March 2019, and updated information received on 17 January 2020 (including the introductory video), except where modified by the following conditions.*
- 2. There must be no more than eight guests on site at any one time.*
- 3. Guests must not access the site using campervans, motorhomes or other large vehicles that will oversize for the access width and turning space available at the site. .*
- 4. All four parking spaces on the site must be made available for guests.*
- 5. The activity must be managed by a person or agent who is resident in the Dunedin urban area.*
- 6. In the first week of October every year (or within a week of any change of details) the person or agent managing the property must provide their name and contact details, including phone number, by posting a flyer in the letterboxes of the following properties: 22, 24A, 24, 26, 29, 31, 33/33A, 34 Belmont Lane.*
- 7. The person or agent managing the property must prepare, within one month of granting the consent, an aerial photographic map showing the access from Musselburgh Rise to the car parking spaces on the site and a Site Management Plan that incorporates the requirement of condition 3 above, and includes advice that the area is a residential neighbourhood where expectations are that there should be no disruptive noise, particularly after 10pm in the outdoor area, and privacy should be respected. The aerial photographic map and Site Management Plan must be to the satisfaction of the Manager, Resource Consents.*
- 8. A notice must be placed by the door accessing the outdoor area reminding guests of the requirements of the Site Management Plan.*
- 9. The person or agent managing the property must ensure that all guests booking the site agree to a condition that states they have viewed the introductory video, aerial photographic map and Site Management Plan, and will abide by the Site Management Plan.*

10. *Under Section 128 of the Resource Management Act 1991 the Council may once per year, serve notice of its intention to review the conditions of this consent at the Consent Holder's cost, in order to address any traffic or noise effects which may arise from the activity.*

Advice Notes

1. It is recommended that pursuant to Schedule 5 of the Property Law Act, a formal agreement be drawn up between the owners/users of Belmont Lane in order to clarify their maintenance responsibilities.
2. The activity will need to meet the noise standards of the Proposed Second Generation Dunedin City District Plan set out in Rule 9.3.6.1 of the Plan.
3. This is a resource consent. Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the use of the dwelling for visitor accommodation.
4. 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.
5. 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.
6. 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.
7. 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 11 August 2020

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David Benson-Pope
Chair
Hearings Committee