

7 December 2016

Jan and Andrea Warburton
C/- Maaike Duncan
Terramark
PO Box 235
Dunedin 9054

Dear Jan and Andrea Warburton

RESOURCE CONSENT APPLICATION

SUB-2016-84 and LUC-2016-430
111A CLIFFS ROAD
ST CLAIR, DUNEDIN

The above application to undertake a two lot subdivision with an undersized access was processed on a limited notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Panel, comprising Commissioner Lee Vandervis (Chairperson), Commissioner Mike Lord, and Commissioner Andrew Whiley, heard and considered the application at a hearing on 24 November 2016.

At the end of the public part of the hearing, the Panel, 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 Panel.

The Panel has **granted** consent to the application on 24 November 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:

- Jan Warburton (the Applicant)
- Phil Page (legal Counsel for the applicant)
- Maaike Duncan (surveyor for the applicant)

Council staff attending were:

- Kirstyn Lindsay (Advisor to Panel)
- Lianne Darby (Processing Planner)
- Grant Fisher (Transportation Planner)
- Wendy Collard (Governance Support Officer).

Submitters in attendance included:

- Judy Stewart
- Allan Cubitt (on behalf of Judy Stewart)
- Allan Heathman (on behalf of Mark O'Kane)
- Peter Foster

Procedural Issues

A number of procedural matters were tabled.

- 1 Cr Vandervis raised the issue of evidence pre-circulated by the applicant after the 10 working day timeframe set out in Section 41B(2) of the RMA. While a waiver had been given by the Chair of the Hearings Committee (Cr Wilson), Cr Vandervis asked if there were any objections to the acceptance of this evidence. There were no objections and the evidence was tabled.
- 2 An email from Doree Gerold, a submitter to the application, advised that if Lyders Road was upgraded in the manner proposed by the applicant in the pre-circulated evidence then she would support the application and would not make an appearance at the hearing. The panel accepted Ms Gerold's withdrawal of her submission
- 3 Allan Heathman advised that he would be speaking on behalf of Mark O'Kane who was unable to attend the hearing.

Principal Issues of Contention

The principal issues of contention are as follows:

- The legal and physical access to the site.
- Rubbish collection point at the intersection of Lyders and Cliffs Roads

Summary of Evidence

Introduction from Processing Planner

Mrs Darby outlined the application and provided details of the subject site. She noted that the subject site is zoned Residential 1, and it is located within an urban landscape conservation area. She considered that the proposed subdivision was in accordance with the zone expectations for minimum site size. However, she advised that the new sites will not have frontage to a legal road, and accordingly, the subdivision proposal is considered to be a non-complying activity pursuant to Rule 18.5.2 of the Dunedin City District Plan.

While Mrs Darby believed that there was adequate legal access provided to Cliffs Road and did not consider the lack of frontage to be an issue, she accepted that the standard of formation of the access was below District Plan expectations. Furthermore, the proposed subdivision would introduce an additional user to a right of way which was already serving greater than 12 users.

Mrs Darby further explained the access to the site, noting that it was a shared access from Cliffs Road. She advised that the first 360m or so is over Lyders Road which is a privately owned right of way and formed and sealed to a width of approximately 4.0m from the edge of the carriageway of Cliffs Road up to the junction of the first driveway. Most of this sealing is actually on road reserve. Thereafter, she noted that the access is metalled, and formed to a width of approximately 3.0m. Mrs Darby advised that at one point, the formation of Lyders Road crosses outside the legal extent of the right of way and into 101A Cliffs Road and that there was no easement over this short stretch of driveway.

Mrs Darby noted that at the upper end of Lyders Road, the access enters the road reserve of Isadore Road which is legal road but unformed in this location. The driveway continues for approximately 40m within the road reserve before crossing back into private land. The last 120m or so of the access is via rights of way over 111 Cliffs Road and a triangle of land held in shared ownership. The access is formed to a width of approximately 3.0m, and is metalled.

Mrs Darby advised the Panel that two subdivisions utilising the shared access have already been granted but have not yet been given effect to. She noted that conditions associated with these subdivision consents will upgrade the lower section and the intersection of the access within Lyders Road prior to title being issued. The applicant of this proposal seeks to upgrade the next 40m of Lyders Road by widening it up to 5.0m, and hard surfacing it.

Mrs Darby noted that under the proposed district Plan (2GP), the site is zoned General Residential 1, and it is within an urban landscape conservation area. However, she advised the Panel that the relevant rules of the operative District Plan are in effect, and that the 2GP is not relevant when determining the activity status of the proposal.

Overall, Mrs Darby noted that the relevant Council departments have few issues with the proposed subdivision. She believed that the new lots can be adequately serviced, and there are no known geotechnical issues for the land. She advised that the Council's Landscape Architect had few concerns but that it was recommended that any new dwelling will require consent and, as part of that assessment, it should be modest in scale with recessive colours. An advice note is included to this effect. She also noted that Council's Transportation Planner recognised the issues with the access, but that he was supportive of the proposed upgrade work which was considered to be fair and reasonable, and in proportion to the proposed increase in usage. With respect to the two options proposed by the applicant for the upgrading of the access, she noted that the Transportation Planner was open to either option.

In making her assessment of the environmental effects of the proposal, Mrs Darby considered the nature of the application, the local environment, Council Officers' comments, and the comments of submitters and was of the opinion that the proposed subdivision itself is of little concern to Council. She noted that while the access was less than ideal, the recommended conditions requiring the upgrading of the formation in accordance with the proposal put forward by the applicant and Transport department would improve the access for all users. She reminded the Panel that the Property Law Act 2007 provides remedies for the upgrading of the a right of way which sit outside of the Resource Management Act. She noted that these remedies had not been applied by any current user of the right of way and that it was her view that the incremental subdivision of the sites with rights to the access is the most likely means of addressing the inadequacies of the access. Accordingly, it was Mrs Darby's recommendation to the Panel to grant consent to the proposal. The Panel accepted the information included in the s42A report.

The Applicant's Case

Mr Page opened the applicant's case and spoke to the application. He advised the Panel that he supported Mrs Darby's recommendation and accepted the majority of conditions detailed in the S42A report.

Mr Page spoke to his circulated legal submissions outlining in more detail the remedies offered and responsibilities imposed by the Property Law Act 2007 (see Schedule 5 of the Property Law Act 2007) in respect of upgrading the right of way. He detailed case law which supported his position (*Williams-Elliot V McManaway (2000) 4 NZ ConvC 193,117 (HC)*). Mr Page also drew the Panel's attention to an encumbrance on the title (CFR 610647) for the right of way. The encumbrance is by way of Transfer 81253 which appeared to impose the maintenance of the right of way onto the property owner. Both the rights given in the Property Law Act 2007 and Transfer 81253 provided means to enact the upgrading of the right of way by one, some, or all owners/users of the right of way.

That said Mr Page accepted the proposed conditions for this subdivision which required a proportional upgrade of the access. Of the two options proposed to seal [A1] 40m of the chainage between 160 and 200m or [A2] 40m within the Isadore Road reserve, it was the applicant's preference to seal the second option. Mr Page noted that one reason for this preference was that the area contained within the Isadore Road reserve was not part of the right or way and, as such, required a condition of consent to enforce the upgrade as the remedies in the Property Law Act 2007 or Transfer 81253 were not available to this piece of land. Mr Page also noted that the [A2] sealing of the Isadore section of the road would have more benefit to directly adjoining property holders, as the [A1] seal section had no directly adjoining houses. The applicant accepted the condition regarding the reshaping and resurfacing of the rest of the accessway and also the conditions regarding the sight lines at the Cliffs Road intersection, passing bays, and the traffic calming devices.

With regard to the creation of a refuse area within the Isadore Road area which had been promoted as a condition of consent in the S42A report, Mr Page noted that the applicant had

received advice from DCC that a rubbish truck would not travel over the right of way or Pt Sec 1 Blk XII Dunedin and East Taieri SD without a maintenance waiver given by all owners and users of the Lyders Road. This waiver was to protect the operator from any liability for damage caused by the truck travelling over the access.

Mr Page believed that the rubbish collection area is not a matter that should be dealt with through an RMA consent process and referred the Panel to the three Newbury tests set out in *Newbury District Council v Secretary of State for the Environment [1981] 1 All ER 7311 (HL)* which are to be applied to consent conditions. He believed that imposing the creation of the refuse collection area did not pass the Newbury tests. He noted that the Supreme Court in *Waitakere City Council v Estate Homes Limited [2006] NZSC 112, [2007] 2 NZLR 149* required conditions of consent to be specifically related to the subdivision. While he empathised with the matters raised by Mrs Stewart in her submission regarding dogs and vermin getting into the rubbish which was deposited by the users of Lyders Road for collection at the junction of Lyders and Cliffs Roads, he believed that there were also remedies outside of the RMA to address these issues. These remedies included the Dog Control Act and Local Government Act and fell outside of the scope of this subdivision consent.

Mr Page made a couple of minor wording changes to proposed conditions of consent which were generally welcomed by the Panel and recommending planner. Overall, Mr Page requested that that application be granted.

Mrs Duncan then read her written submission. When questioned by the Panel regarding the areas on the right of way where a 5m width could not be achieved she advised that it was only that area located at the southwest end of the red area (identified as option [A1]) shown on map 11645-H2. She did not envisage road widening works which would cut into the cliff or be built out with retaining walls as being part of those works. In response to the Panel's questions regarding access over 101 Cliffs Road, Mrs Duncan advised that this access was being negotiated but if this was not secured the access could be formed within the right of way although this may result in a fairly acute angle and further work had to be undertaken in this area.

With regards to the rubbish collection area, she noted that a turning circle for the truck would need to be constructed over Isadore Road reserve and over the parcel of land legally described as Pt Sec 1 Blk XII Dunedin and East Taieri SD held in CFR's OT14D/85, OT 15A/785, OT14D/86, OT 400/5, OT19B/648/ OT 19B/650, 245769 and 236646 (109, 111, 111A, 111B, 111C, 111D, 111E and 111F Cliffs Road). As this piece of land was held in multiple ownership this process could be complex as it would require the approval of all owners and requiring this approval could not reasonably be required as a condition of consent.

Mrs Warburton made a personal statement detailing her involvement in the Arts and commitment to Dunedin. She sought the opportunity by way of this development to remain living independently while ensuring close-by support of family. She requested that the Panel grant consent.

Council Officer Evidence

As landscape values and water and waste servicing were not raised as matters by the applicant or by submitters, the Council's Landscape Architect and Water and Waste Services Officer did not appear at the hearing and their recommendations were accepted by the Panel as per the officer's report included in the agenda.

Mr Fisher advised the Panel that he was comfortable with the approach taken by the applicant and that he supported the inclusion of the conditions recommended within the s42A report. Overall, he believed that these conditions were consistent with the previous subdivisions granted for this area and would see an incremental upgrade of the access commensurate with the scale of the development. He noted that the conditions imposed were by design similar to those imposed on the previous subdivision consents which were utilising this access. The purpose of this duality was to ensure that if one or both of the earlier subdivisions did not go ahead then the road upgrading would still occur. It also provided the opportunity for all consent holders to cost share if they were so inclined.

When questioned about the sight lines at the proposed Cliffs Road intersection, passing bays, and the traffic calming devices, he was comfortable with the proposed conditions. He noted that there was no crash history recorded for the intersection or any speeding complaints. Mr Fisher advised the Panel that the choice between options [A1] and [A2] were finally balanced. From an asset management point of view, he considered that [A1] provided fewer maintenance requirements as there was only one exposed edge but that [A2] probably provided greater mitigation of effects on neighbours in terms of noise and dust.

Evidence of Submitters

Mr Cubitt appeared on behalf of Andrew and Judith Stewart and spoke to the pre-circulated planning evidence he submitted. He noted that the Stewarts did not oppose the subdivision but considered that the subdivision should be undertaken in a way that did not have adverse effects on them. The Stewarts believed that the road was not adequate and currently they experienced significant noise and dust effects at their property at 107 Cliffs Road. The Stewarts also had concerns regarding the rubbish collection point at the intersection of Lyders and Cliffs Road and the amenity and health effects of this. They supported the creation of a rubbish collection point at Isadore Road as proposed by a condition in the S42A report, although they had concerns regarding the ability of a rubbish truck to traverse Lyders Road safely.

While Mr Cubitt agreed that failure to provide legal frontage to a road was generally treated as a technicality, in this instance he believed it was fundamental to the challenges faced by this subdivision. Mr Cubitt noted that the District Plan provided for up to 12 lots to be serviced by a right of way and that the current number of users was well in excess of this at 17 existing or consented lots. It was his opinion that the road was at capacity and no further subdivision should be allowed unless the road was upgraded to NZS 4404:2010 or NRB/MANZ Code of Practice Design for Urban Streets.

Mr Cubitt explored the policy framework and concluded in his opinion that the proposal would not achieve the policy outcomes in that the development of the area was not being undertaken in a co-ordinated manner. He believed the Panel should carefully consider if the proposal passed the test set out in S104D of the RMA. Furthermore, he believed that the application should be refused as the development could not provide adequate physical access and failed the test set out in S106(1)(c) of the RMA.

Mrs Stewart provided further detail regarding the effects that they were experiencing as a result of the right of way as it was currently being used. She offered a remedy to the Panel in that she believed that if access could be provided from Isadore Road then this would address many of her concerns.

Mr Heathman spoke to Mr O'Kane's neutral submission. Mr O'Kane preferred the option [A2] with regard to the sealing of the access as this would reduce noise and dust effects on his property. Mr Heathman relayed anecdotal evidence of a time when he and Mr O'Kane witnessed a fire appliance access the right of way and explained how this presented a number of challenges because of the narrow formed width of the access. With regard to relocation of the rubbish collection point, Mr Heathman noted that Mr O'Kane would like further consultation regarding this matter as this had the potential to adversely affect the access to their property.

Mr Foster spoke to his submission and outlined the history of Lyders Road and his past unsuccessful experiences with the right of way users to have the access upgraded to an adequate standard. He outlined a number of engineering options which could ensure that the access was adequate.

Processing Planner's Review of Recommendation

Mrs Darby reviewed her recommendation and remained of the opinion that the consent should be granted. It was her view that incremental subdivision remained the best way to secure the upgrade of the right of way given that the current users had not sought to upgrade the access themselves. While she noted the remedy proposed by Mrs Stewart regarding forming an access over Isadore Road, she noted that even if this was formed, all the lots would still have legal right to pass over Lyders Road. She believed that Lyders Road would

remain the preferred option for those with rights over the right of way as this was the most direct route.

Mrs Darby believed that by imposing the same access formation conditions on each of the subdivision consents, the upgrade of the access was being undertaken in a cohesive and co-ordinated manner. She accepted the challenges posed by the creation of the rubbish collection area in Isadore Road reserve and was satisfied if the Panel determined to remove that obligation.

Applicants Right of Reply

Mr Page agreed with Mrs Darby's summation. He confirmed the option [A2] as the preferred location for the sealing and concurred with the removal of the condition which required the creation of a rubbish collection area in Isadore Road. Mr Page agreed with Mr Cubitt, in that the key matter for this two lot subdivision was access. Mr Page reminded the Panel that Mr Cubitt had not provided any expert transportation evidence and, as such, the only expert transportation evidence that they had before them to consider was that of Mr Fisher. Mr Page noted that Mr Fisher had concluded that the effects were no more than minor, subject to conditions. As the conditions had been accepted by the applicant, Mr Page considered that there were no other matters of contention and that consent 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 Panel considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 20 Transportation and the relevant objectives and policies in the 2GP. 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 and Proposed Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Panel 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 Panel reached the following decisions 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 Panel inspected the site and this added physical reality to the Panel's considerations.

*That pursuant to section 34A(1) and 104B, and after having regard to Part II matters and sections 104, 104D and 106(1)(c) of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of 111A Cliffs Road, Dunedin, being the site legally described as Lot 1 DP 25450 (CFR OT17C/223) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as shown on the attached certificate.*

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being the establishment of residential activities on Lots 1 and 2 SUB-2016-84 utilising an access with under-width formation which is not fully hard surfaced and serves more than twelve users; at 111A Cliffs Road, Dunedin, subject to conditions imposed under section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

The Panel considered the evidence heard, the relevant statutory and plan provisions, the principle issues in contention and the main findings of fact. The main findings of fact have been incorporated within the reasons discussed below.

The effects of the proposal are considered to be no more than minor for the following reasons:

1. The proposal is for a subdivision to create an additional residential site in a residential zoned area, and in this respect the effects of the proposal are largely anticipated by the District Plan. The Panel notes that the new lot to be created will comfortably meet the minimum lot size for the Residential 1 zone, and the overall density of development will be well within the expectations of the current and anticipated 2GP zoning. 500m² sections are anticipated in this zone by both plans and the proposed subdivision creates two sections each of over 1000m². The Panel recognises that the new lots to be created will be of generous size for the Residential 1 zone. Both new lots will have adequate legal access. As such, the proposed subdivision itself does not present any issues for Council. Furthermore, the Panel notes that the large lot sizes were appropriate for the setting, given the urban landscape conservation area designation for this area.

Access

2. The proposed subdivision will introduce one additional user to the upper section of Lyders Road. The applicant has selected the portion of access identified as option [A2] for upgrading. This will result in the upgrading and hard surfacing of the Isadore Road section, and the reforming and metaling of the intermediate part of Lyders Road is to be undertaken as part of the subdivision works. The Panel considers that the proposed upgrade of the access is appropriate given the number of existing users and given the upgrade is proportional to the proposed increase in use. The upgrade will improve the access for all users.
3. The increased use of the access is considered to be acceptable. All four submissions received by the DCC centred on having appropriate access infrastructure in place. The upgraded access will be close to meeting the District Plan requirements for up to twelve users. Notwithstanding the current and proposed number of 17 users, the only expert traffic evidence presented was from the DCC Transportation Planner and that confirmed that the proposed upgrades from Cliffs Road to the applicant's site could reasonably service up to 20 users.
4. The standard of the access is an historical issue, and the applicants are only one party responsible for the maintenance of the access. It is therefore unreasonable to expect the applicants to upgrade the entire access to a fully compliant standard as part of the subdivision works. The Property Law Act 2007 allows all users and owners of a right of way to undertake works on an access, and accordingly, the other residents already have the opportunity to rectify those inadequacies which concern them. One benefit of the proposed subdivision is expected to be a maintenance agreement between the users of the access, to agree on an on-going maintenance plan, including funding, for works on the access. Any agreement is a civil matter which falls outside of the Panel's jurisdiction. However, the Panel was of the opinion that a maintenance agreement was very important to ensure that the access is appropriate, regularly maintained, and that the costs are fairly apportioned. The Panel notes that the consent holder has made efforts to commence negotiations on a maintenance agreement, and it is possible that Council staff from Planning and Transportation Operations could be of assistance.
5. There is a short section of the existing access which passes into 101A Cliffs Road although there is no legal easement allowing this to occur. The Panel has granted consent to the proposed subdivision but recognises that the historical encroachment of the formation needs to be addressed before access is legally available. Accordingly, the applicant must facilitate the creation of an easement, reroute the formation within

the legal corridor, or obtain written consent from the owners of 101A Cliffs Road for the use of the existing encroachment, prior to the consent being given effect. The applicant gave evidence that they were in discussion with the owners of 101A Cliffs Road, and were close to having an agreement signed. In the event that this agreement does not eventuate, it was presented that there was sufficient space to re-route this deviating corner within the road reserve and that adequate sight-lines and approaches would still be achievable. The DCC Transportation Planner concurred with this assessment.

6. That Panel notes that there is potential for further subdivision, as many existing properties using the shared access are large sites. Consequently, it is likely that there may be future applications for subdivision, but the Panel is unable to consider this possibility as part of this application. The Panel understands that the under-width nature of the access formation means any future subdivision proposal using this access will need to be assessed on its own merits and in light of the existing environment at that time. It is possible that future applicants will be required to undertake additional upgrading of the access. The submitters request that the alternative access via Isadore Road be made available was considered but deemed to be beyond the scope of this application. The Panel considered that in any event, this may not be a solution to the use of Lyders Road as all concerned properties have a legal right of way over Lyders Road and may well use it in preference to Isadore Road even if narrower.
7. The Panel also considered the other access issue raised by submitters including access for a fire appliance or a rubbish truck. Anecdotal evidence relating to the difficulties of turning a fire appliance was presented, but the appliance was able to access houses even if having to reverse out. The expert evidence from the DCC Transportation Planner confirmed that the proposed access upgrades would sufficiently address fire appliance access issues. The problems caused as a result of rubbish trucks not being able to enter a private road without a turning area and a waiver from all affected parties, were identified as being outside the scope of this resource consent application and could be addressed by other approaches, e.g. to DCC Waste Collection.

Servicing

8. There are no known issues with the servicing of the extra proposed lot. The Panel notes that the existing reticulated services for this area are some distance from the proposed subdivision, but the applicant can extend the existing services and the Water and Waste Services Business Unit has no concerns about the capacity of the infrastructure to service the new lot. Stormwater drainage will need to be managed properly. The applicant intends to improve the stormwater drainage along the existing access as part of the upgrade works.

Landscape and Hazards

9. The Panel recognises that Lot 2 is situated in an urban landscape conservation area, and once a design for any new building on this site has been finalised, resource consent will be required as a controlled activity. Council's control is restricted to the location, design and appearance of the structure. An advice note advising the applicant of this further consent process has been included.
10. The Consulting Engineer has not identified any concerns about the stability of the new sites except in regard to future earthworks during the development of proposed Lot 1. The Consulting Engineer does not oppose the proposal, but advises that the earthworks should be undertaken in an appropriate manner, and that retaining structures be specifically designed and constructed. Advice notes detailing the Engineer's advice regarding the development of proposed Lot 2 and the access formation have been included.

Determination

11. Section 104 of the Act requires that the Council take into account Regional Policy Statements and rules of any plan or proposed plan. The proposal was found to be consistent with the objectives and policies of the Regional Policy Statement for Otago and the proposed Regional Policy Statement for Otago.
12. The Panel accepted the DCC Planner's reasoning that the application is to be considered as a non-complying activity pursuant to Rule 8.7.1(i) of the operative District Plan. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan. This test is only relevant for the subdivision component of the application. The Panel is of the opinion that the subdivision will have adverse effects which are no more than minor, and that the proposal is consistent with the objectives and policies of both the Dunedin City District Plan and the Proposed Plan. Accordingly, the Panel is in the position of being able to consider the granting of consent.
13. The Panel considers that the subdivision and land use proposals satisfy the relevant sections of Part 2 of the Resource Management Act and concludes 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 granting 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

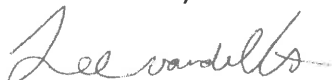
Any appeal must be served on the following persons and organisations:

- 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



Cr Lee Vandervis
Chair Hearings Panel

Consent Type: Subdivision and Land Use Consent

Consent Number: SUB-2016-84 & LUC-2016-430

Location of Activity: 111A Cliffs Road
 Legal Description: Lot 1 DP 25450 (CFR OT17C/223)
 Lapse Date: 7th December 2021

Conditions

Subdivision SUB-2016-84

*That pursuant to section 34A(1) and 104B, and after having regard to Part 2 matters and sections 104, 104D and 106(1)(c) of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of 111A Cliffs Road, Dunedin, being the site legally described as Lot 1 DP 25450 (CFR OT17C/223) into two lots, subject to the conditions imposed under sections 108 and 220 of the Act, as follows:*

1. *The proposal must be given effect to generally in accordance with the plan prepared by Terramark Ltd entitled, 'Lots 1 and 2 being a Proposed Subdivision of Lot 1 DP 25450 111A Cliffs Road Dunedin, Locality and Access Diagram,' and the accompanying information submitted as part of SUB-2016-84 received by Council on 14 September 2016, except where modified by the following:*
2. *That pursuant to section 116 of the Act, lawful access is obtained over Part Section 32 DP 923 Ocean Beach Survey District (101A Cliffs Road), or the access is rerouted within the road reserve so as to avoid this property, or written consent is provided by the owners of this property allowing access to continue on an informal basis.*
3. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant must ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements must be granted or reserved and included in a Memorandum of Easements on the survey plan.*
 - b) *That easements for services in favour of Lot 2 must be duly created or reserved as necessary, including any easements needed to discharge stormwater into the watercourse.*
 - c) *That the following amalgamation condition must be shown on the survey plan:*

'That the 1/10th share of Part Section 1 Block XIII Dunedin & East Taieri Survey District (CFR OT17C/233) held in CFR OT14D/86 be held as two undivided 1/20th shares by Lots 1 and 2 hereon (one share each) as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith (see CSN Request 1398008).'
4. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant must complete the following:*

Access

- a) That the intersection of Lyders Road and Cliffs Road must be upgraded so that there is at least 40m of sight distance for a driver, along Cliffs Road in both directions, or an alternative distance that has been sufficiently justified and agreed to by the Transport Manager. Detailed engineering plans for this upgrade must be submitted to the Transport Manager for approval prior to construction works commencing.
- b) That the shared private access must be upgraded generally in accordance with the measures proposed in the application. The upgrades must include the following:
- i. The section of the shared access that passes through the legal extension of Isadore Road (shown as [A2] on Appendix 2) must be widened and hard surfaced up to 5.0m in width. The upgraded vehicle access formation must be adequately drained.
 - ii. The full length of the rest of the access from 160m chainage to beyond the entrance to the lots must be reshaped and resurfaced, and must include adequate drainage provisions.
 - iii. A passing bay must be constructed on Lyders Road near the legal extension to Isadore Road. The profile of the passing bay must be constructed in accordance with the relevant NZTA, Austroads, or other appropriate engineering guidelines as accepted by Transportation Operations.
 - iv. Two traffic calming structures must be installed, one above the vehicle entrances of 107 and 113 Cliffs Road.
- c) A Traffic Management Plan for the management of the access during upgrading works must be submitted to the Transport Manager for approval prior to works being commenced.
- d) The access must be managed in accordance with the approved Traffic Management Plan during the construction period of all upgrade works.
- e) All construction work on the site must be designed and conducted to ensure that construction noise does not exceed the noise limits in the following table.

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

Sound levels must be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise. Please Note: the lower noise limits on Sundays and Public Holidays may mean that no construction work can occur on these days.

Water Supply

- a) *An "Application for Water Supply – New Service" must be submitted to the Water and Waste Services Business Unit for approval to establish new water connections to Lot 2. Details of how Lot 2 is to be serviced for water must accompany the application.*
- b) *Upon approval by the Water and Waste Services Business Unit, water service connections must be installed in accordance with the requirements of Section 6.6.2 of the Dunedin Code of Subdivision and Development 2010.*

Erosion and Sediment Control

- c) *That all practicable measures must be used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.*

Land Use LUC-2016-430

*That pursuant to section 34A(1) and 104C and after having regard to section 104 of the Resource Management Act 1991, the Dunedin City Council **grants** consent to a **restricted discretionary** activity being the establishment of residential activities on Lots 1 and 2 SUB-2016-84 utilising an access with under-width formation which is not fully hard surfaced and serves more than twelve users; at 111A Cliffs Road, Dunedin, subject to conditions imposed under section 108 of the Act, as follows:*

1. *The proposal must be given effect to generally in accordance with the plan prepared by Terramark Ltd entitled, 'Lots 1 and 2 being a Proposed Subdivision of Lot 1 DP 25450 111A Cliffs Road Dunedin, Locality and Access Diagram,' and the accompanying information submitted as part of LUC-2016-430 received by Council on 14 September 2016, except where modified by the following:*
2. *Only one residential unit must be established on each of Lots 1 and 2 because of limitations with the standard of the shared access from Cliffs Road.*

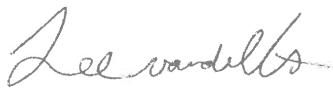
Advice Notes

1. In addition to the conditions of a 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. A similar responsibility exists under the Health Act 1956.
2. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
3. 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.
4. This is resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for any construction work as part of the subdivision.
5. 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. Any new development must be within 135m of a fire hydrant, otherwise the proposal will be non-compliant with fire-fighting requirements.

6. The installation and connection of a new water service to the existing public water reticulation system or the upgrading of an existing water service connection will be carried out after the consent holder has completed and submitted an 'Application for Water Supply' form to the Water and Waste Services Business Unit or an approved AWSCI, as per the Dunedin City Council Water Bylaw 2011. A quote for the required work must be obtained from an approved water supply connection installer (AWSCI). The list of AWSCI's, application form and the full process can be found here <http://www.dunedin.govt.nz/services/water-supply/new-water-connections>.
7. Parts 4, 5 and 6 (Stormwater Drainage, Wastewater and Water Supply) of the Dunedin Code of Subdivision and Development 2010 must be complied with.
8. It is advised that any drainage issues and requirements (including the necessary works) will be addressed via the building consent process.
9. Any vehicle access from the carriageway to the property boundary is over road reserve and is to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Council's Transportation Operations Department).
10. This consent does not address any earthworks for this subdivision associated with the development of the new lots, or the formation of the access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of the District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
11. During the widening of Lyders Road, there is potential for surcharge loading as a result of sideling fill. If there are such fills, then slopes may not be filled steeper than 2H:1V(27°) without specific engineering design and construction.
12. Amendments to the existing road alignment may be required if the current "physical access outside the legal corridor" (Small's Corner) is required to be re-routed. Such work is likely to require excavation into the high side of the road, with associated retaining works.
 - All walls retaining over 1.5m, or a surcharge / slope, including terracing, require design, specification and supervision by appropriately qualified person/s
 - Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties.
13. The consent holder is to ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.
14. The following documentation is recommended as best practice guidelines for managing erosion and sediment -laden run-off and for the design and construction of erosion and sediment control measures for small sites:
 - ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - 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).

15. It is advised that future earthworks are likely to require the following:
- All walls retaining over 1.5m, or a surcharge / slope, including terracing, will require design, specification and supervision by appropriately qualified person/s;
 - Where the long-term stability of other's land or structures may rely upon the continued stability of retaining works, the designer must confirm that the retaining structure can be safely demolished following a complete design life without creating hazards for neighbouring properties;
 - 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;
 - Slopes may not be cut steeper than 1:1 (45°) without specific engineering design and construction;
 - Slopes may not be filled steeper than 2h:1v (27°) without specific engineering design and construction.
16. It is recommended that a formal agreement be drawn up between the owners and users of the access lots to clarify the responsibilities for the maintenance of the access lots.
17. It is advised that Lot 2 is situated in an urban landscape conservation area, and once a design for any new building on this site has been finalised, resource consent will be required as a controlled activity. Council's control is restricted to the location, design and appearance of the structure. Council's Landscape Architect recommends that a new dwelling on Lot 2 be of modest scale and recessive colours.

Issued at Dunedin this 7th Day of December 2016



Lee Vandervis
Hearing Panel Chair

Appendix 2: Copy of Approved Plans for access upgrade [A2].

For clarity the portion of road marked in cerise over the portion of Isadore Road reserve is to be upgraded as per Condition 4(b)(i) of SUB-2016-84
(Scanned image, not to scale)

