

12 January 2017

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Dunedin City Council
C/-Julie McMinn
Opus International Consultants Ltd
Private Bag 1913
DUNEDIN

Dear Sir/Madam

RESOURCE CONSENT APPLICATION

LUC-2016-384
58 NAIRN STREET; 25 SHETLAND
STREET & 25 LYNN STREET
DUNEDIN

The above application for clearance of bush within an Urban Landscape Conservation Area was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. Independent Resource Management Commissioner Colin Weatherall heard and considered the application at a hearing on Wednesday 14 December 2016.

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

The Commissioner has **granted** consent to the application on 12 January 2017. 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:

Julie McMinn - Planning Consultant
Janan Nirainjanaan - DCC Engineering project Manager
Meng Hong Low - Project Engineer

Hendrikus Koch – for Dunedin Environment Centre Trust (DECT) as subcontractor responsible for vegetation restoration (appearance requested by Commissioner Weatherall at the hearing)

Council staff attending were:

John Sule (Advisor to Commissioner), Lianne Darby (Processing Planner), Barry Knox (Landscape Architect) and Lynne Adamson (Governance Support Officer).

Submitters in attendance included:

- John Hollows
- Nic and Cherry Hart

Procedural Issues

No procedural issues were raised. A correction was made to the Section 42A report after it was identified that pages 147-149 located in the Landscape Architects comments were misplaced and were attachments to the comments from the Parks Department.

Principal Issues of Contention

The principal issues of contention are as follows:

- The significance of the effects of bush removal and the effectiveness of the proposed mitigation,
- The 15 year duration of the consent,
- Whether there was jurisdiction to consider the construction phase effects including the location of the depot during the works, and
- Access routes used by school children and disruption to these access routes.

Summary of Evidence

Introduction from Processing Planner

Lianne Darby spoke to a summary of her report and provided an overview of the proposal before commenting on the notification of the application and the submissions received. She outlined the reasons for recommending that the consent be granted subject to conditions.

The Applicant's Case

Julie McMinn outlined the proposal, the land that would be affected by the works, consultation that had occurred and the planning framework. In terms of the planning framework, she noted that she largely agreed with the position of Ms Darby in the Section 42A report. Ms McMinn noted that the DECT had come on-board as a subcontractor responsible for implementing the Vegetation Management Plan. In terms of access for school children Ms McMinn noted that safe street alternatives were available and access exclusions were necessary for health and safety reasons.

Janan Nirainjanan outlined the project details, time frames and the construction method to be used. He identified that the existing pipe was defective and that an 8m wide clearance vegetation strip was proposed for open trench system to replace the pipe. In response to a question from the Commissioner regarding the open trenching method selected Mr Nirainjanan outlined the various construction options examined by the DCC and he noted that the selection of open trenching was primarily due to the ground conditions and certainty over the quality of the result. It was not purely about cost. Open trenching provided certainty that the renewal work will be of the required standard. In response to a question from the Commissioner, he clarified that the work would proceed in stages from manhole to manhole.

The Commissioner enquired about ORC consent and Ms McMinn identified that the stream will need to be realigned in places and that a consent had been sought from the ORC for this work. This consent was proceeding on a limited notified basis and that the ORC was comfortable with separate consent processes. Ms McMinn noted that part of realignment will be temporary and part will be permanent (school street culvert). The watercourse will be mostly unchanged.

In response to a question by the Commissioner regarding private properties affected by the works, Ms McMinn noted that these were not part of the consent and the works on private properties would occur in accordance with standard Water and Waste Department practices.

The Commissioner asked a question about the increase in capacity by the pipe diameter increase and its likely longevity. This was not able to be answered at the time the question was asked but Ms McMinn agreed to provide the information on behalf of the applicant.

Evidence of Submitters

John Hollows spoke in support of his submission. He acknowledged the reasons for the work but was concerned about the impacts on residents and users of the park as it gets a lot of use and access will be impacted. He also noted his concern about construction phase effects and the duration of the project. Mr Hollows outlined the problems experienced by residents with recent renewal works in Wales Street by Citicare. This work resulted in the use of adjoining reserve land close to residential properties as a depot. Mr Hollows considered the proposal to be light on detail in relation to the depot and the construction period was very long (up to 15 years).

Officer Reports

Barry Knox noted that his landscape comments were contained in the Section 42A report, and that he stood by these comments. He considered that the area was significant in terms of bush and vegetation and that the removal of an 8m strip of vegetation for the works will produce significant adverse effects in the short to medium term. In the longer term, some value lost may be returned. In his opinion a lot will depend on how well the work is undertaken and subsequent revegetation work that has been put in place. Mr Knox supported the involvement of Dunedin Environment Centre Trust as a sub-contractor responsible for implementation of the vegetation management plan. He noted that they principally established the planting in the area and ensured it was as nice as it is. He noted that he had suggested a couple of conditions which have been picked up in Ms Darby's Section 42A report. Mr Knox identified that for a period of time after work completed the vegetation plan would need to be monitored and adhered to.

Although Mr Koch from the DCET was not formally included as a witness for the applicant or a submitter, the Commissioner requested that he join proceedings as an expert and respond to his questions regarding the relocation of existing plants and restoration plans. It was acknowledged by the Commissioner that Mr Koch had extensive involvement with the original planting of the reserve and its development as part of the Dunedin Environment Centre Trust and that the Trust was now a subcontractor for the project to oversee the vegetation management plan.

Mr Koch responded to questions from the Commissioner noting that some branches of a mature Oak would be located within the 8m vegetation clearance area but the effects on the tree should be able to be managed. Mr Koch noted that in terms of the time frame for restoration it was likely to be 10 years for restoration to be effective. He noted that while some plants would be lost the majority were able to be reused and a term of 3-5 years could be expected before a return to lush growth for relocated plants.

In response to a Commissioner's question regarding whether the entrances to the walkways should be being given a priority Mr Koch noted that the walkways were an overall experience as they were used for recreation and not primarily a street amenity enhancement for passing pedestrians.

Processing Planner's Review of Recommendation

Ms Darby noted that she did not want to alter her recommendation. She noted that the effects were significant in the short term but observed that the landscaping to be removed was created and not remnant vegetation and could be reinstated to good effect. She observed it will take time but even when it is not mature the environment will still be pleasant.

Applicants Right of Reply

The applicant responded to matters raised by the submitted in the right of reply. Ms McMinn noted that a construction managing plan condition had been offered and noted that the effects of a depot were not within the scope to the application as they were permitted by the Plan. Ms McMinn noted that once construction commenced it would be continuous. She also outlined the reasons for seeking a 15 year term for the consent. Ms McMinn noted she could not answer the Commissioner's request regarding the capacity increase but she agreed to provide this information once it was obtained. The information was provided to the Commissioner on 19 December 2016 by email.

Discussions regarding access, signage and contact numbers for complaint issues occurred, with the Commissioner expressing a view that direct contact numbers were necessary for prompt response to emergencies.

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 Commissioner considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 8 Residential Zones, and 13 Townscape. 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 Statements for Otago.

Main Findings on Principal Issues of Contention

The Commissioner 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 Commissioner reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken during the public-excluded portion of the hearing, the Commissioner inspected the site and this added physical reality to the Commissioners considerations.

*Pursuant to section 34(1) and 104C, and after having regard to section 104 of the Resource Management Act 1991, and the Dunedin City District Plan, the Dunedin City Council **grants** consent to the **restricted discretionary** activity being the removal of up to 30% of the vegetation within the Shetland Street Reserve and Kaikorai Common (part of ULCA 16), subject to conditions imposed under section 108 of the Act as shown on the attached certificate:*

Reasons for this Decision

- 1 Having considered the report, the relevant sections of the District Plans and the submissions I agree that the proposed removal of vegetation is a discretionary (restricted) activity under the operative Dunedin District Plan and the matters that I can consider are limited to those specified and considered in the Section 42A report. Earthworks effects are not insignificant but are permitted activities under the Utilities Section of the operative District Plan and do not require a resource consent.
- 2 The applicant has considered alternatives and due to ground conditions, costs and reliability of service has selected an open trenching method. An upgrade of this nature needs to be secured for the city for the long term and I am satisfied that the open trenching approach has been selected for good reasons.
- 3 I agree with the landscape evidence that the effects of bush removal are significant in the short to medium term. I consider that significant effort on behalf of the applicant will be required to restore landscaping on the affected sites. This is particularly so, if the vegetation is to regain the quality evident on my site inspection.
- 4 I note that the reason for this work is a necessary upgrade to essential utility services and on that basis I consider that the medium term significant effects of the removal of bush are acceptable provided proposed mitigation is effective in the long term. The vegetation management plan is critical to successful restoration of landscape planting.

- 5 I note there will be some disruption to the access to walking tracks and playing fields enjoyed by residents and those attending schools in the area and there are submissions on this issue. Access disruption in my opinion is unavoidable and it is necessary to ensure safe working environment. Alternative access routes are available and clear notification through signs and direct contact with affected parties will be secured through consent conditions.
- 6 I have considered the 15 year term promoted by the application and the submission from Mr Hollows raising issues with the long duration of construction phase effects. I was advised by the applicant that the project will run continuously once it is commenced and will progress in stages from manhole to manhole. It appears that the works and restoration planting can be completed within 5 years and a further 5 years of monitoring will be required. I note that monitoring does not need to be carried out within the lapse date of the consent and can continue beyond the lapse date once the consent is given effect to. Having considered the issues, I am prepared to allow another 5 years as a contingency and specify a 10 year term as this is a large project that will progress in stages. I acknowledge that there may be delays to the stages along the way but, I consider the 15 year term requested is too long. In the event 15 years is required, I note that the applicant will be able to apply for an extension of time under Section 125 of the Act if they can provide an adequate explanation for the delay and demonstrate substantial progress.
- 7 While I acknowledge that the scope of my considerations is related to the impact of the bush removal, long duration construction phase effects are likely to occur as a direct result of the project. I note that although resource consent is not required for construction works the applicant has obligations in relation to Sections 16 & 17 of the RMA to avoid unreasonable noise and adverse effects. As a consequence, the selection of a depot location with sufficient separation from neighbours would appear to be an appropriate response to meeting these obligations for a long duration project. The applicant has indicated that they are likely to set up on Bishops Court playing fields at a distance from residential properties. Advice notes are included regarding construction phase effects. I note that the applicant has volunteered to provide a construction management plan. This is accepted and included as a consent condition.
- 8 I have concluded that the granting of this 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 Lianne Darby, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

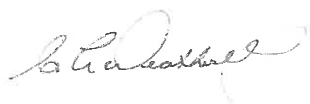
Monitoring

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 works/activity, this consent will require 3 inspections once the works commence.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspections 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



Colin Weatherall
Independent Resource Management Commissioner

Consent Type: Land Use Consent

Consent Number: LUC-2016-384

Location of Activity: 58 Nairn Street; 25 Shetland Street & 25 Lynn Street

Legal Description: Shetland Street Reserve:
25 Lynn Street: Part Section 9 Block III Upper Kaikorai
Survey District (Crown Land Proc 293031 1965 p1799);

Kaikorai Common:
25 Shetland Street: Lot 5 DP 3912 (CFR OT238/11);
58 Nairn Street: Lot 2 DP 22287 (Local Purpose Reserve
(Recreation));

58 Nairn Street: Lot 5 DP 16014 & Lot 1 DP 20366 (CFR
OT12A/169); and

58 Nairn Street: Lot 1 DP 20102, Lot 3 DP 15390 & Lot 2 DP
9781 (CFR OT12A/97 Pt Cancelled).

Lapse Date: 12 January 2027, unless the consent has been given effect
to before this date.

*Pursuant to section 34(1) and 104C, and after having regard to section 104 of the Resource Management Act 1991, and the Dunedin City District Plan, the Dunedin City Council **grants** consent to the **restricted discretionary** activity being the removal of up to 30% of the vegetation within the Shetland Street Reserve and Kaikorai Common (part of ULCA 16), subject to conditions imposed under section 108 of the Act, as follows:*

1. *That the proposal shall be undertaken generally in accordance with the plans, the Indicative Vegetation Management Plan, and the details prepared by OPUS International Ltd and submitted with LUC-2016-384, received at Council on 22 August 2016, except where modified by the following:*
2. *Vegetation removal is to be minimised where possible but must not exceed removal within an 8m wide band as specified on the approved plans. A Vegetation Management Plan shall be prepared. It is anticipated that this Plan will be based closely on the indicative plan submitted with the application, but shall finalise the following:*
 - *the areas of vegetation to be removed;*
 - *Provision for the clear marking and identification of bush and trees to be removed/retained to avoid contractor errors;*
 - *the programme of the works;*
 - *measures employed during the period of the works to ensure public safety and minimise public disruption;*
 - *methodology for removal and reuse of the vegetation;*
 - *details on the location and management of the area/s used for storing the disturbed plants intended for replanting;*
 - *a replanting plan for the entire length of the Shetland Street Reserve and Kaikorai Common, indicating location, density and species of plants; and*

- detail on the follow up maintenance plan needed for the re-establishment of transplanted and new plantings;
- A monitoring programme over a five year period including provision for replacement of trees that die or fail to thrive.

The Vegetation Management Plan shall be submitted to the Council for approval prior to works commencing on-site.

3. *The removal, storage, replacement and re-establishment of vegetation within the Shetland Street Reserve and Kaikorai Common shall be undertaken in accordance with the approved Vegetation Management Plan. All vegetation restoration work is to be completed within 24 months of the completion of the pipeline.*
4. *That at least fifteen (15) days prior to construction activities pursuant to this consent commencing, a Construction Management Plan shall be submitted to the Dunedin City Council Resource Consents Manager for approval. The Construction Management Plan shall be prepared by a suitably qualified person and is to be designed to minimise environmental impacts on neighbours. The Construction Management Plan shall detail any depot facilities to be used, the hours of construction work, the routes to be taken by construction vehicles, emergency contact signage, access to the site during the construction period, noise and dust control measures and any other relevant matters.*
5. *In addition the consent holder shall advise the Council, in writing, of the start date of the works. The written advice shall be provided to Council by email to rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.*
6. *The consent holder shall advise the Summerset Dunedin Village, in writing, of the start date of the works on the Shetland Street Reserve section of the project at least five (5) working days before the works are to commence. The consent holder shall also advise all schools in the area which are likely to have children using the walkway through the Shetland Street Reserve and/or Kaikorai Common, in writing, of the start date for the works at least five (5) working days before the works are to commence.*
7. *If the walkway is to be closed to the public at any point during the undertaking of the works, the consent hold shall advise (or re-advise if necessary), in writing, all schools in the area which are likely to have children using the walkway through the Shetland Street Reserve and/or Kaikorai Common of the date of closure at least five (5) working days before the closing of the walkway.*
8. *If the walkway is to be closed to the public at any point during the undertaking of the works, signage shall be displayed at any public entry point of the reserves, advising of the closure of the walkway.*
9. *That any damage to neighbours' fencing will be reported to the property owners, and shall be rectified (on a temporary basis, if necessary) as soon as possible.*
10. *That any neighbour to be affected by the removal of, or alteration to, their fencing during the undertaking of the site works shall be consulted prior to the fencing work commencing. The consent holder shall take all responsibility for the repair or replacement of any such fencing to a comparable standard as existing prior to the works. Photos should be taken of the fence prior to works commencing if this standard is likely to be in dispute. If the property owner seeks the replacement with an improved fence, then this shall be negotiated in accordance with the requirements of the Fencing Act.*
11. *The consent holder shall adopt all practicable measures to mitigate erosion and to control and contain sediment-laden stormwater run-off into the watercourse and/or Council's stormwater system from the site during any stages of site disturbance associated with the removal and reinstatement of the vegetation.*

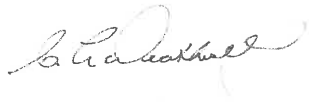
Advice Notes:

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. Given the lengthy duration of the construction phase the applicant is encouraged to establish any depot facilities associated with the proposed works to renew infrastructure services at a location that will minimise impacts on neighbouring residential properties.
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. 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.
4. 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.
5. 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 Guidelines for the Canterbury Region" Report No. CRCR06/23.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guidelines for Small Sites."
 - Dunedin City Council Silt and Sediment Control Guide
6. All measures (including dampening of loose soil) should be undertaken to ensure that dust, resulting from the proposed earthworks, does not escape the property boundary.
7. All construction noise shall comply with the following noise limits as per New Zealand Standard NZS 6803:1999.

Time of Week	Time Period	Leq (dBA)	L max(dBA)
Weekdays	0730-1800	75	90
	1800-2000	70	85
	2000-0630	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

Please note the low noise limits for construction activity on Sunday and Public Holidays are likely to mean that no construction works can occur on Sundays or public holidays.

Issued at Dunedin on this 12th Day of January 2017

A handwritten signature in dark ink, appearing to read 'Colin Weatherall', written in a cursive style.

Colin Weatherall
Independent Resource Management Commissioner

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[illegible]

