

Sections 95A-F: Notification Assessment

05 October 2015

Cuisine Dunedin Limited
C/O Anderson and Co
PO Box 5933
Dunedin 9058

Dear Conrad and Don,

RESOURCE CONSENT APPLICATION LUC-2015-345: 140 HIGHCLIFF ROAD

Thank you for your application for resource consent to establish a retirement village at 140 Highcliff Road.

This letter outlines the assessment of the application undertaken pursuant to Sections 95A – F of the Resource Management Act 1991, with regard to the requirement for notification. The Council has concluded that this application should be publically notified. My formal notification assessment, as required by the Resource Management Act, is set out below.

NOTIFICATION ASSESSMENT, SECTIONS 95A-F, RESOURCE MANAGEMENT ACT 1991
History of the Site

The subject site has historically been run as a restaurant and bar and prior to this as a hotel. The hotel was erected in 1923, since then the premise has undergone a series of renovations including being transformed into a tavern, bar, games room and managers flat.

In 2010, the site was subject to a resource consent for a boundary adjustment between the subject site and 148 Highcliff Road. The resource consent also authorised existing land use breaches including commercial activity of the tavern and the physical yard and height plane breaches for the buildings onsite.

Description of Activity

Resource consent is sought to establish residential activity with 25 retirement apartments and a clubroom at 140 Highcliff Road, Dunedin.

The application has two parts, to seek a Section 127 variation to resource consent LUC-2010-59 to change the existing tavern into a 'Clubroom' and, a land use consent for 25 beds/retirement apartments.

'Club room'

The 'Club Room' will be staffed by a chef and an assistant and will be operated on a membership basis. The club room will be available to the residents, their guests and members of the public who sign up for membership. The applicant's agent suggests the membership will work similar to a typical golf club.

Residential Activity

The 25 room residential activity will provide 17 'Type A' rooms and eight 'Type B' rooms. The 40m² 'Type A' apartments will be in a 'studio format' featuring one bedroom with an ensuite, and a kitchen/dining/living room. The 50m² 'Type B' apartments are 'one bedroom rooms' and feature a kitchen/dining/living room, and bedroom with an ensuite.

The residential activity will be spread over two levels with 11 'Type A' apartments and four 'Type B' apartments on the top floor and six 'Type A' rooms and four 'Type B' rooms on the bottom floor with a two level glazed atrium in the middle. 26 car parks will be provided in the basement under the residential units. Shared facilities include the area confined by the glazed atrium, laundry and 'Club Room'. No staff will be provided on-site, other than to service the 'Club Room'.

The club rooms are to be operated in conjunction with the apartments not separately as a licensed premise. Therefore, for the purposes of this resource consent it is considered appropriate to assess the entire proposal under one land use consent and not process the application as a variation. It is important to note that the existing consent forms part of the existing environment and therefore its effects will be taken into account in the planning assessment.

Further information

Further information from the applicant was received on 30th September 2015 which included supporting information for the proposal, an existing site plan, a rough internal plan of the 'Type A' and the 'Type B' units, an earthworks excavation plan and a traffic assessment.

Earthworks

The earthworks will involve 829m² of excavated material, a change in ground level of 3m (max) and retaining walls varying in size from 800mm to 3.76m in height.

Activity Status

The subject site is zoned **Residential 1** in the Dunedin City District Plan. Highcliff Road is classified as a District Road and Bone Street is classified as a local road in the Plan's Roding Hierarchy. There are no designations or hazards relevant to this site.

The activity status of the proposed activity needs some consideration. The applicant refers to the proposed complex as a 'retirement village' which, in the common usage of the term, would suggest independent residential units within a village-style development. In this case, the term refers to a facility that accommodates retired persons within one building, in a series of apartments with no staff provided onsite.

Residential activity is defined in the District Plan as:

*'... the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes **rest homes**, emergency housing, refuge centres, halfway houses, **retirement villages** and papakaika housing it these are **in the form of residential units** [bolding mine].'*

A Residential Unit is, in turn, defined as:

'... a building or part of a building which is self-contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, be excludes units where staff provide for more than 18 residents. Staff living on the site are not included in this limit.'

While retirement villages are not specifically defined within the Dunedin City District Plan, they have, in the past, (Ryman v Dunedin City Council) have been assessed as community support activities. The District Plan defines a 'Community Support Activity' as:

'... the use of land and buildings or collection of buildings which are used for the primary purpose of supporting the health, welfare, safety, education, culture and spiritual well-being of the community including childcare facilities and community police offices but excludes hospitals, recreational activities,

facilities which have or require a liquor licence or which provide restaurant facilities.'

In this situation, the above definition is not applicable as the facility does not provide a rest home level of care or any of the above listed facilities other than restaurant which is excluded from the definition.

Therefore, the proposed activity is considered a residential activity with 25 residential units and a Licensed Premise (being the 'club room').

The proposal does not comply with the following rules:

- 8.7.1 which permitted 1 residential unit per 500m² of site area, the subject site is approximately 1664m², therefore the can provide up to 3 residential units. The proposal breaches this rule by 22 residential units.

The performance criteria as listed in Rule 8.7.2 are not strictly applicable non-complying activities, but provide guidance as to acceptable use of the site. The proposal fails to comply with the following:

- 8.7.2(i)(a) specifies a 4.5m front yard setback measured from the road boundary. The new extension/building will be built 1.5m from the Highcliff road boundary, therefore breaching this rule by 3.0m
- 8.7.2(ii) specifies height plane angles of 63° measured from existing ground level at the boundary. The proposed building will breach this rule by approximately 18degrees at the closest point (southwest boundary).
- 8.7.2(iii) requires a maximum 9m height limit measured from the existing ground floor level. The proposal breaches this rule by 200mm.
- 8.7.2(iv) requires a maximum 40% building site coverage. The proposal has site coverage of over 60%.
- 8.7.2(v) requires that every residential unit to provide a ground level an area of 35m² amenity space that is capable of containing a 4.5m diameter circle and in the case where a residential unit is not situated on the ground floor, balconies may be used to offset the require amenity open space at a rate of 1m² of balcony area for 1m² of amenity open space. No balconies are proposed and all but 5 residential units will be at ground floor level. There is about 100m² of 'spare' space on the subject site however; much of this is concrete sloping ground. There is a small area of garden on the western corner of Highcliff Road and Bone Street. 25 residential units require 875m² of amenity open space, the proposal breaches this significantly.
- 8.7.2(vi) requires development containing more than one residential unit that does not share a common wall shall be separated by a distance of no less than 4m, the distance between the 'Type A' apartments and 'Type B' apartments will be 1m.
- 8.7.2(vii)(a) specifies minimum visitor car parking at 1 visitor car park per 5 residential units, the rule also specifies 1 car park per residential unit. The proposal provides 26 parking spaces, one car park has been deemed redundant as the space will be needed for manoeuvring, and therefore 25 in total are useable resulting in a parking shortfall of 5 visitor car parking spaces.

The 'club room' will operate as a restaurant and licensed facility which are both considered to be a licensed premise, licensed premises are not provided for in the Residential 1 zone.

The residential activity does not comply with the permitted activity, and the licensed premise is not provided for in the residential 1 zone, therefore, in accordance with Rule 8.7.6, the proposal is assessed as a **non-complying** activity.

Notification Assessment

In arriving at a determination about the notification status of an application for a non-complying activity the Council must consider the following criteria set out in sections 95A to 95F of the Resource Management Act 1991.

95A Public notification of consent application at consent authority's discretion

- (1) A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.
- (2) Despite subsection (1), a consent authority must publicly notify the application if—
 - (a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or
 - (b) the applicant requests public notification of the application; or
 - (c) a rule or national environmental standard requires public notification of the application.
- (3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—
 - (a) a rule or national environmental standard precludes public notification of the application; and
 - (b) subsection (2)(b) does not apply.
- (4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.

95B Limited notification of consent application

- (1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons or affected order holders in relation to the activity.
- (2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.
- (3) The consent authority must give limited notification of the application to any affected order holder even if a rule or national environmental standard precludes public or limited notification of the application.

95C Public notification of consent application after request for further information or report

- (1) Despite section 95A(1), a consent authority must publicly notify an application for a resource consent if—
 - (a) it has not already decided whether to give public or limited notification of the application; and
 - (b) subsection (2) or (3) applies.
- (2) This subsection applies if the consent authority requests further information on the application under section 92(1), but the applicant—
 - (a) does not provide the information before the deadline concerned; or
 - (b) refuses to provide the information.
- (3) This subsection applies if the consent authority notifies the applicant under section 92(2)(b) that it wants to commission a report, but the applicant—
 - (a) does not respond before the deadline concerned; or
 - (b) refuses to agree to the commissioning of the report.
- (4) This section applies despite any rule or national environmental standard that precludes public or limited notification of the application.

95D Consent authority decides if adverse effects likely to be more than minor

- (1) A consent authority that is deciding, for the purpose of section 95A(2)(a), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—
 - (a) must disregard any effects on persons who own or occupy—
 - (i) the land in, on, or over which the activity will occur; or
 - (ii) any land adjacent to that land; and
 - (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and
 - (c) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a

- matter for which a rule or national environmental standard reserves control or restricts discretion; and*
- (d) *must disregard trade competition and the effects of trade competition; and*
- (e) *must disregard any effect on a person who has given written approval to the relevant application.*

95E Consent authority decides if person is affected person

- (1) *A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) *The consent authority, in making its decision,—*
 - (a) *may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and*
 - (b) *in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and*
 - (c) *must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) *Despite anything else in this section, the consent authority must decide that a person is not an affected person if—*
 - (a) *the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or*
 - (b) *it is unreasonable in the circumstances to seek the person's written approval.*

95F Consent authority decides if person is affected order holder

- A consent authority must decide that a person is an affected order holder, in relation to an activity, if—*
- (a) *the person is the holder of a customary rights order; and*
 - (b) *the activity may have any adverse effects on a recognised customary activity carried out under the order in accordance with section 17A(2); and*
 - (c) *the person has not given written approval to the activity or has withdrawn approval to the activity in a written notice received by the authority before the authority has decided whether there are any affected order holders.*

SECTION 95A

Section 95A(2)(a)

Sustainability

This assessment matter requires consideration of the objectives and policies of the Sustainability Section of the District Plan, which seek to provide for development at an appropriate density to allow the sustainable management of the infrastructure, to avoid the indiscriminate mixing of incompatible uses and developments, and to encourage the redevelopment of existing sites in areas where the urban service infrastructure is underutilised.

The proposed development will create 22 more units than what the Dunedin City District Plan allows for and in this respect the proposal contravenes the density rule by a large degree. As discussed in more detail below, overall, the adverse effects of the proposal are considered to be more than minor in respect to density, amenity values, character and transportation.

Amenity, Bulk and Location and Character

The proposal was discussed with Councils Urban Designer Peter Christos. Mr Christos does not fundamentally oppose the idea of a high density residential development being

established at the site, however he does have issue with the amount of onsite amenity space, bulk of the building and the design in respect to character.

The proposal externalises the bulk of the building, and because of this creates a large bulky development. Mr Christos believes that in its current state, the design of the proposal is not sustainable for the residential 1 zone. This is because there is no on-site amenity and little thought been given to the character of the surrounding residential environment and because of this the impact of this development on the amenity values, character and surrounding environment are deemed to be more than minor.

Waste and Water Services

The proposal was forwarded to Council's Waste and Water Services Consents and Compliance Officer who has provided the following preliminary comments:

Water supply:

There isn't an issue with the capacity to supply water. The development may require a larger boundary water connection, backflow device and water meter.

Wastewater:

Though this area is not generally a wastewater problem area, the extra strain from additional points of discharge into the system could pose potential issues and overloading. WWS would strongly encourage implementation of water saving devices, including but not limited to, low-flow shower heads, 6/3 dual flush toilets and aerated sink mixers. This will assist in reducing water consumption and the average volume of wastewater being disposed of from the development.

The proposal, as it stands, poses a risk the Council's reticulated waste and water services; however it is apparent that through the mitigation of consent conditions the proposal may be acceptable.

Transportation

The proposal was referred to Council's Transportation Planner, Mr Grant Fisher for comment. Mr Fisher's comments are as follows:

I have undertaken brief preliminary assessment of the above application. In general, most transportation aspects would seem to be acceptable to us, outlined briefly as follows:

- *The site access from Bone Street is considered to be located in an acceptable position, though it will be required to meet out minimum construction standards.*
- *On-site parking provisions are generally acceptable, though we not that there may be small parking shortfalls from time to time. Parking shortfalls are expected to only have minimal impact on the road network.*
- *The dimensions of the on-site parking area are considered to be adequate for the proposed activity, subject to normal conditions with respect to formation and pavement markings.*
- *Overall effects relating to traffic generation and road levels of service are expected to be minor, sight distance issues notwithstanding (see below).*

We still have some concerns regarding the sight distance at the Highcliff Road/Bone Street intersection. In particular, as the intersection cannot meet minimum sight distance standards the applicant's traffic engineer has relied on a method of crash prediction outlined in the NZTA Economic Evaluation Manual. We would view this type of assessment to be reasonably subjective, and the traffic engineer does not appear to have taken into account actual traffic speed data in relation to crash severity which should be another consideration. This matter requires further consideration by Transportation. From a transportation perspective, this may be an aspect that warrants notification as the sight distance deficiency impacts on a District Road that carries traffic from areas outside the general vicinity of the site.

I accept Mr Fisher's advice and I believe that proposed development requires further assessment as at present the application will have more than minor effects on volume of traffic and traffic safety of Highcliff Road.

Overall

As such, it is considered that the proposal may have adverse effects on the environment that are more than minor, and it is considered that public notification of the proposal is appropriate, in accordance with the provisions of Section 95A(2)(a) of the Act.

SECTION 95A(4)

It is reasonable to expect that the current proposal may generate interest and scrutiny from the public, and in particular from surrounding properties and community. This is because; the proposal is a large high density residential development within a generally low to medium density environment. As such, it is considered that there is a need to accommodate public participation in the assessment of the proposal. Accordingly, pursuant to Section 95A(4) of the Resource Management Act 1991, the need to provide an opportunity for public comment is deemed to comprise special circumstances that warrant public notification.

SECTION 95B

Not relevant to this assessment – see 'Section 95A' above and 'Section 95E' below.

SECTION 95C

Not relevant to this assessment.

SECTION 95D

Sections 95D(1)(a) and 95D(1)(e) direct that in deciding whether an activity will have or is likely to have adverse effects on the environment that are more than minor, a consent authority must disregard any effects on persons who:

- a) i) own or occupy the land in, on or over which the activity will occur,
- ii) own or occupy any land adjacent to that land; and
- e) have given written approval to the application.

With regard to (a)(i), the owner of the subject site is Cutler Investments Limited

With regard to (a)(ii), Council records indicate that the adjacent lands are owned as follows:

- 5 Bone Street – T A Fraser
- 148 Highcliff Road – J Forlong
- 130 Highcliff Road – B Beck
- 4 Bone Street – P Reynolds
- 6 Bone Street – J Currie
- 8 Bone Street – J Columb

With regard to (e), no written approvals were provided with the application and therefore the effects on the parties in (a)(ii) above cannot be discounted.

It is considered that the application has the potential to have minor or more than minor effects on a wider audience, as detailed 'Section 95A(4)' above and 'Section 95E' below.

SECTION 95E

Further to the matters discussed under 'Section 95A(4)' above, it is difficult to gauge what parties may have a significant interest in the proposal. The surrounding properties above will be affected however, in general the proposal may affect the wider surrounding residential environment.

It is therefore considered appropriate for the application to be processed on a notified basis. Effects of the proposal extend into the wider environment and cannot be internalised. These effects may be more than minor.

SECTION 95F

Not relevant to this application.

CONCLUSION/WHERE TO FROM HERE

The council has concluded, for the reasons outlined above, that this application should be processed with notice, pursuant to Sections 95A-F of the Act.

The options now available are to:

1. Request a suspension to investigate an amended proposal.
2. Withdraw the application; or
3. Proceed with a notified application.

Should you wish to withdraw the application, please advise the council of this in writing. A partial refund of the \$1200 deposit paid may be payable.

Should you wish to proceed with a notified application, a deposit of \$7000 is required. In this case, a payment of \$1300 has been made for the application, so an additional payment of \$5,700 will therefore be required for the application to be processed.

The information submitted with the application should be comprehensive enough to enable any interested party to make their own analysis of the effects of the proposal, without reliance on prior knowledge or experience of the planning issues.

Please contact me on 03 474 3699 or email sophie.lord@dcc.govt.nz if you have any queries or would like any further information.

Yours faithfully



Sophie Lord
Planner