

2 June 2021

J G Williamson  
C/- Flanders Marlow Limited,  
PO Box 1283  
Dunedin 9054

Via email: [grant@flandersmarlow.co.nz](mailto:grant@flandersmarlow.co.nz)

Dear Mr Williamson

**RESOURCE CONSENT APPLICATION:**

**LUC-2021-220**  
**7 LYNWOOD AVENUE**  
**DUNEDIN**

Your application for resource consent was processed on a non-notified basis in accordance with sections 95A to 95G of the Resource Management Act 1991. The application was considered by a Senior Planner, under delegated authority, on 2 June 2021.

The Council has granted consent to the application with a condition. The assessment of the application, including the reasons for the decision, is set out in the report attached to this letter. The consent certificate is attached to the rear of this letter.

**The consent certificate outlines the conditions that apply to your proposal. Please ensure that you have read and understand all of the consent conditions.**

You may object to this decision or any condition within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

Senior Planner - Enquiries  
Dunedin City Council  
PO Box 5045  
Dunedin 9054

You may request that the objection be considered by a hearings commissioner. The Council will then delegate its functions, powers and duties to an independent hearings commissioner to consider and decide the objection. Please note that you may be required to pay for the full costs of the independent hearings commissioner.

Alternatively, there may be appeal rights to the Environment Court. Please refer to section 120 of the Resource Management Act 1991. It is recommended that you consult a lawyer if you are considering this option.

You will be contacted in due course if you are due a partial refund or you have to pay additional costs for the processing of your application.

Please feel free to contact me if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'ES Schonwald'. The signature is stylized with a large 'E' and 'S'.

Elizabeth Schonwald  
**Planner**

## **APPLICATION LUC-2021-220: 7 LYNWOOD AVENUE, DUNEDIN**

Department: Resource Consents

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### **DESCRIPTION OF ACTIVITY**

Consent is being sought retrospectively for an undersized outdoor living space for a family flat. The family flat has dual access, with its own entrance off Lynwood Avenue and an entry from the primary residential unit.

The family unit is estimated to have been established around the mid to late 80's for the owner's mother to reside. The current owner has and will continue to have the family flat occupied by family members, but the flat is currently not independently occupied at this time.

The floor area for the proposed family flat is approximately 33m<sup>2</sup> and the outdoor living space which is directly accessible from the principal living space is 8m<sup>2</sup> and faces north. The family flat provides one bedroom, an ensuite and a living and kitchen space. The applicant confirms that the family flat is on the same water and waste infrastructure connection as the primary unit and is also on the same electricity account. The vehicle access and parking for the family unit is shared with the primary unit.

The primary unit provides a possible six or seven habitable rooms and the family unit provides only one habitable room.

As the application is for an existing residential building we have also used the opportunity to recognise any outstanding breaches, in this instance the location of the residential building within the minimum setback from the road frontage.

The site is a steep southwestern facing section, with an architecturally designed house partially built on poles. The site is near the city's green belt and the lower half of the site is also significantly vegetated.

The subject site is legally described as Lot 1 DP 18572 (held in Record of Title 9C/198).

### **REASONS FOR APPLICATION**

Dunedin currently has two district plans: the Operative Dunedin City District Plan 2006 (the "Operative District Plan", and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.

The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

#### **Operative District Plan**

The subject site is zoned **Residential 1** in the Operative District Plan. Lynwood Avenue is classified as a Local Road in the Plan's Roading Hierarchy.

The relevant rules of the 2006 District Plan are inoperative in this instance, because there have not been any appeals on the relevant corresponding provisions of the 2GP.

## **Proposed 2GP**

The subject site is zoned **General Residential 1** in the Proposed 2GP. Lynwood Avenue is classified as a Local Road in the Plan's Roading Hierarchy.

### Land Use Activity

The land use component of the proposal falls under the definition of "**standard residential activity**".

Performance standard **15.3.3.3(e)** provides for family flats as a permitted activity in the Residential Zones subject to complying with the relevant performance standards, 15.5.14.1 Tenancy and 15.5.14.2 Family Flats – Design as well as the performance standards for density and outdoor living. The established Family Flat meets the relevant performance standards for family flats and density.

Performance standard **15.3.3.3(c)** requires the provision of outdoor living space. The proposed activity fails to comply with the following performance standard:

- 15.5.11.1(a)(i) minimum area of outdoor living space which requires that a one bedroom ground level residential unit provide a minimum outdoor living space of 25m<sup>2</sup>. The established family flat will only have direct access to an area of outdoor living at the entrance which is 8m<sup>2</sup>. The family flat does not have direct access to the primary residential unit's outdoor living space so is unable to use the exception 15.5.11.1(a)(v).

The failure to comply with the above standard requires the proposal to be assessed as a Restricted Discretionary Activity pursuant to Rule **15.5.11.1(d)**. Council's discretion is restricted to the following matters:

- Effects on on-site amenity for residents (Proposed 2GP Assessment Matters 15.10.2.1 and 15.10.3.10)

### Development Activity

The proposal falls under the definition of "**Buildings and Structures Activities**".

In accordance with Rule 15.3.4.1 and 15.3.4.2 development activities and building and structure activities are a permitted activity, subject to compliance with performance standards. The consent is for an existing building that complies with the majority of the performance standards apart from **15.6.13.1(a)(i)** which requires all new buildings to be setback 4.5m from the road boundary, the existing building at its closest point is located approximately 3.5m from the boundary. The deck and single garage are exempt in accordance with 15.6.13.1(a)(viii)(5) and 15.6.13.1(a)(viii)(3) from the 4.5m setback.

The failure to comply with the above standard requires the proposal to be assessed as a Restricted Discretionary Activity pursuant to Rule **15.6.13.1(b)**. Council's discretion is restricted to the following matters:

- Effects on surrounding sites residential amenity (Proposed 2GP Assessment Matters 15.10.2.1 and 15.10.4.1(a)); and
- Effects on neighbourhood residential character and amenity (Proposed 2GP Assessment Matters 15.10.2.1 and 15.10.4.1(b)).

## **National Environmental Standards**

There are no National Environmental Standards relevant to this application.

## Overall Status

The Proposed 2GP was notified on 26 September 2015, and some Proposed 2GP rules had immediate legal effect from this date. Some rules became fully operative following the close of submissions, where no submissions were received. Additional rules came into legal effect upon the release of decisions. Those additional rules become fully operative if no appeals are lodged or once any appeals have been resolved.

As discussed above, the relevant Residential 1 Zone Section rules set out in Sections 8 of the Operative District Plan are deemed inoperative and have been replaced by rules in the Proposed 2GP (Section 15: Residential). Accordingly, the activity status for the proposal is assessed on the basis of the Proposed 2GP, and the proposal is considered to be a **restricted discretionary** activity.

## WRITTEN APPROVALS AND EFFECTS ASSESSMENT

### Affected Persons

No affected persons forms were submitted with the application. No person or party is considered to be adversely affected by the activity. This is because the environmental effects of the proposal are internalised within the site boundaries.

### Effects on the Environment

#### Receiving Environment

The existing and reasonably foreseeable receiving environment is made up of:

- The existing environment and associated effects from lawfully established activities;
- Effects from any consents on the subject site (not impacted by proposal) that are likely to be implemented;
- The existing environment as modified by any resource consents granted and likely to be implemented; and
- The environment as likely to be modified by activities permitted in the district plan.

For the subject site, the existing and reasonably foreseeable receiving environment comprises an existing residential activity with a primary residential unit and a family flat contained within the same building footprint over different levels.

For adjacent land, the existing and reasonably foreseeable receiving environment comprises residential activities on hilly topography built on the fringe of the city green belt.

It is against these that the effects of the activity must be measured.

#### Assessment Matters/Rules

Consideration is required of the relevant assessment matters in the Operative District Plan and the relevant assessment rules in the Proposed 2GP, along with the matters in any relevant national environmental standard. This assessment is limited to the matters to which the Council's discretion has been restricted. No regard has been given to any trade competition or any effects of trade competition.

1. *Effects on onsite amenity for residents (Proposed 2GP Assessment Rules 15.10.2.1 and 15.10.3.10)*

This assessment rule requires consideration of the extent to which residential development achieves high quality on-site amenity by providing functional, sunny, and accessible outdoor living

spaces that will allow enough space for on-site food production, leisure, green space or recreation for the residents of the property. The proposal is retrospective for an existing family flat established in the mid to late 80s, for the then occupant's mother to reside onsite. The outdoor living space provided for the family flat is an 8m<sup>2</sup> deck accessible from the principal living space which also acts as the flat's own private entrance off Lynwood Avenue. The space would be big enough for the those residing to have plants in pots and containers or to have a chair and possibly a small table. As the principal living space with kitchen directly accesses this space via a glass sliding door it is considered that occupants of the flat could comfortably bring the outside in by opening up this sliding door making the deck more functional. As the space is north facing it will receive great sun for most of the day. It should be recognised that although the space provided is small as a family unit the occupants will also be able to enjoy the primary residential unit's outdoor living space which although not directly accessible from the flat is accessible via either the main dwelling or walking around the building. The site of the family flat is also located in close proximity to the city's green belt which provides walkways through vegetated areas and areas of open space for sport and recreation. It is because of the reasons discussed above it is considered that any potential effects on the onsite amenity for those residing in the flat due to the small outdoor living space provided would be less than minor.

2. *Effects on surrounding sites residential amenity and neighbourhood residential character and amenity (Proposed 2GP Assessment Rules 15.10.2.1 and 15.10.4.1)*

We are assessing these potential effects in relation to an existing building which was established in the early 1980s. The breach is only for the residential building being a metre within the minimum setback to the street. Both the garage and the deck are exempt under rules 15.6.13.1(a)(viii)(3) and 15.6.13.1(a)(viii)(5).

The breach of the building has no effect on the sunlight neighbouring properties receive, given the internal setbacks and the location on the southside of the road. It is not considered that the building has an effect more than minor on the residential character and amenity of the neighbourhood as the boundary treatment is the same design as the house with areas of established planting along the road frontage to soften the scale of the building.

As such given the reasons above the reduced setback is not considered to have an effect more than minor on the surrounding sites residential amenity or the residential character and amenity of the neighbourhood.

## **NOTIFICATION ASSESSMENT**

### **Public Notification**

Section 95A of the Resource Management Act 1991 sets out a step-by-step process for determining public notification. Each step is considered in turn below.

#### Step 1: Mandatory public notification in certain circumstances

- Public notification has not been requested.
- There has been no failure or refusal to provide further information.
- There has been no failure to respond or refusal to a report commissioning request.
- The application does not involve the exchange of recreation reserve land.

#### Step 2: If not required by Step 1, public notification precluded in certain circumstances

- There are no rules or national environmental standards precluding public notification.
- The application does not involve: a controlled activity, nor a boundary activity. As a result, public notification is not precluded under Step 2.

Step 3: If not precluded by Step 2, public notification required in certain circumstances

- There are no rules or national environmental standards requiring public notification.
- The activity will not have, or be likely to have, adverse effects on the environment that are more than minor.

Step 4: Public notification in special circumstances

- There are no special circumstances that warrant the application being publicly notified. There is nothing exceptional or unusual about the application that makes public notification desirable.

**Limited Notification**

Section 95B of the Resource Management Act 1991 sets out a step-by-step process for determining limited notification. Each step is considered in turn below.

Step 1: Certain affected groups and affected persons must be notified

- The activity is not in a protected customary rights area; the activity is not an accommodated activity in a customary marine title area; and, the activity is not on or adjacent to, or might affect, land that is the subject of a statutory acknowledgement.

Step 2: If not required by Step 1, limited notification precluded in certain circumstances

- There are no rules or national environmental standards precluding limited notification.
- The application does not involve a controlled activity that is not a subdivision.

Step 3: If not precluded by Step 2, certain other affected persons must be notified

- The application does not involve a boundary activity.
- There are no persons where the activity's adverse effects on the person are minor or more than minor (but are not less than minor).

Step 4: Further notification in special circumstances

- There are no special circumstances that warrant the application being limited notified. There is nothing exceptional or unusual about the application that makes limited notification to any other persons desirable.

**SUBSTANTIVE DECISION ASSESSMENT****Effects**

In accordance with section 104(1)(a) of the Resource Management Act 1991, the actual and potential adverse effects associated with the proposed activity have been assessed and outlined above. It is considered that the adverse effects on the environment arising from the proposal are no more than minor.

**Offsetting or Compensation Measures**

In accordance with section 104(1)(ab) of the Resource Management Act 1991, there are no offsetting or compensation measures proposed or agreed to by the applicant that need consideration.

## **Objectives and Policies**

In accordance with section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Operative District Plan and the Proposed 2GP were taken into account when assessing the application.

### Operative District Plan

The proposal is considered to be consistent with the following objectives and policies:

- **Objective 4.2.1 and Policy 4.3.1 (Sustainability Section)**  
These seek to enhance and maintain the amenity values of the Dunedin area.
- **Objective 8.2.1 and Policy 8.3.1 (Residential Section)**  
These seek to ensure that the adverse effects on the amenity values and character of residential areas are avoided remedied or mitigated.

### Proposed 2GP

The proposal is considered to be consistent with the following Proposed 2GP objectives and policies:

- **Objective 15.2.2 and Policy 15.2.2.1 (Residential Zones)**  
These seek to ensure that residential activities, development, and subdivision activities provide high quality on-site amenity for residents.

### Objectives and Policies Assessment

Decisions on the Proposed 2GP have been released and there are no current appeals in respect of the objectives and policies listed above. Accordingly, when considering this proposal, greater weight has been given to the objectives and policies of the Proposed 2GP. It is noted however that the proposed activity finds support in the objectives and policies of both plans in any case.

## **Other Matters**

Having regard to section 104(1)(c) of the Resource Management Act 1991, no other matters are considered relevant.

## **Part 2**

Based on the findings above, it is evident that the proposal would satisfy Part 2 of the Resource Management Act 1991. Granting of consent would promote the sustainable management of Dunedin's natural and physical resources.



## RECOMMENDATION

After having regard to the above planning assessment, I recommend that:

1. This application be processed on a non-notified basis, pursuant to sections 95A and 95B of the Resource Management Act 1991.
2. The Council grant consent to the proposed activity under delegated authority, in accordance with sections 104 and 104C of the Resource Management Act 1991.



Elizabeth Schonwald  
**Planner**

Date: 2 June 2021

## DECISION

I have read both the notification assessment and substantive decision assessment in this report. I agree with both recommendations above.

Under delegated authority on behalf of the Dunedin City Council, I accordingly approve the granting of resource consent to the proposal:

*Pursuant to Part 2 and sections 34A(1), 104 and 104C of the Resource Management Act 1991, and the provisions of the Operative Dunedin City District Plan 2006 and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **restricted discretionary activity** being a family flat with an undersized outdoor living space and a reduced setback of the residential building from the road frontage on the site at 7 Lynwood Avenue, Dunedin, legally described as Lot 1 DP 18572 (Record of Title 9C/198), subject to the condition imposed under section 108 of the Act, as shown on the attached certificate.*



Phil Marshall  
**Senior Planner**

Date: 2 June 2021

**Consent Type:** Land Use Consent

**Consent Number:** LUC-2021-220

**Purpose:** A family flat with an undersized outdoor living space and a reduced setback of the residential building from the road frontage.

**Location of Activity:** 7 Lynwood Avenue, Dunedin.

**Legal Description:** Lot 1 DP 18572 (Record of Title 9C/198).

**Lapse Date:** 2 June 2026, unless the consent has been given effect to before this date.

**Conditions:**

1. *The proposed activity must be undertaken in general accordance with the approved plans attached to this certificate as Appendix One, and the information provided with the resource consent application received by the Council on 29<sup>th</sup> April 2021, and further information received on 31<sup>st</sup> May 2021, except where modified by the following conditions.*

**Advice Notes:**

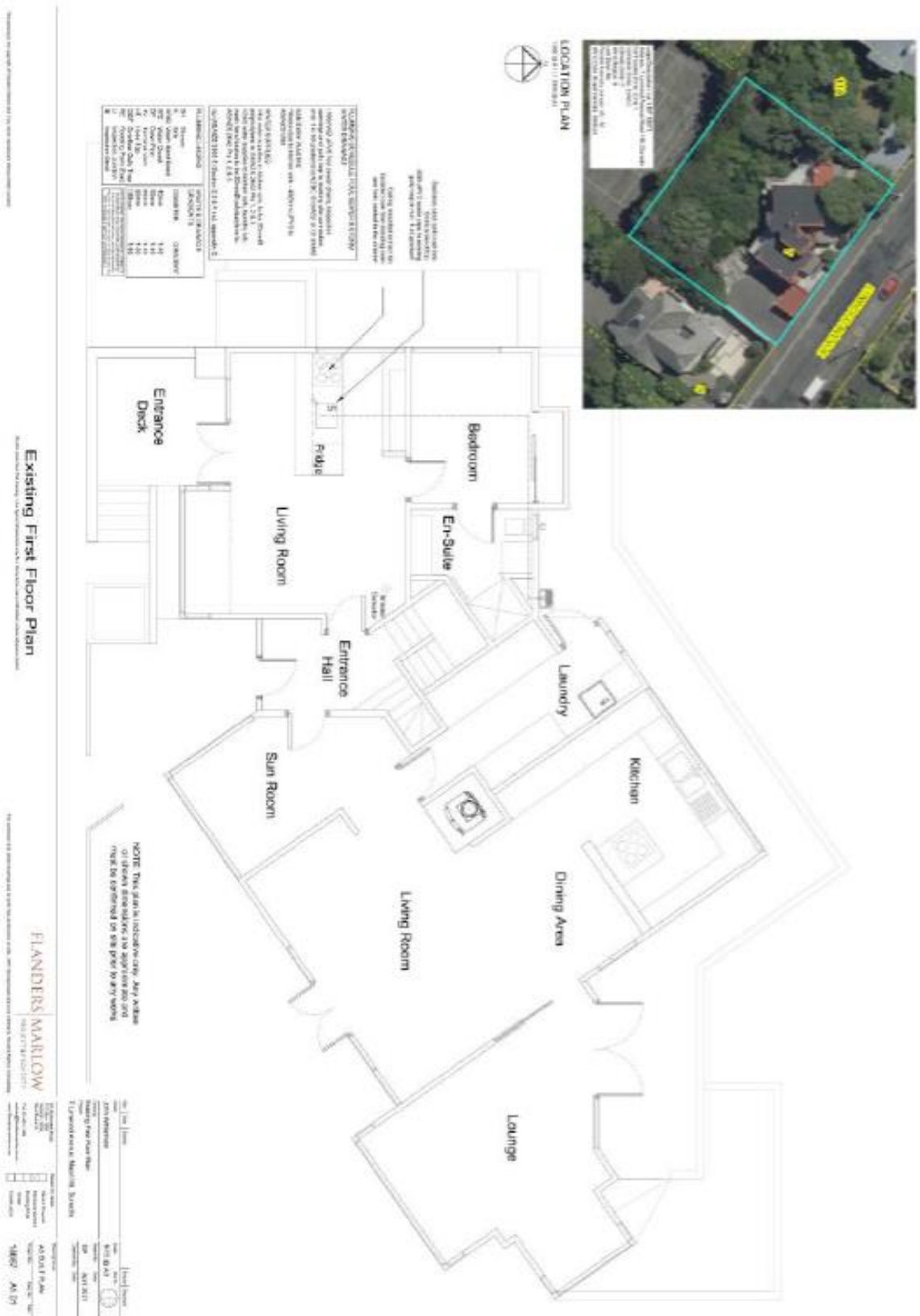
General

1. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the 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. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
5. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

Issued at Dunedin on 2 June 2021



Elizabeth Schonwald  
**Planner**



**First Floor Plan (As Built 2021) – Please refer to Flanders Marlow Building Report dated 28<sup>th</sup> April 2021.**

