



Report

TO: Hearings Committee

FROM: Karen Bain, Planner

DATE: 11 November 2016

SUBJECT: **RESOURCE CONSENT APPLICATION LUC-2016-339:
480 RICcarton ROAD WEST, MOSGIEL**

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 11 November 2016. The purpose of the report is to provide a framework for the committee's consideration of the application and the committee is not bound by any comments made within the report. The committee is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in paragraphs [26] to [66] below, I recommend that consent be granted to the proposal (with conditions). This is because any effects on the amenity of the surrounding area, and the neighbouring property at 482 Riccarton Road specifically, arising from the side yard breach of the proposed dwelling are considered to be acceptable, and comparable with the level of effects that might occur in association with a permitted activity. It is also considered that effects of the proposal can be appropriately mitigated by conditions of consent.

BACKGROUND TO THE PROPOSAL

- [3] A building consent was issued in March 2008, for the establishment of a 14.6m by 10m farm shed with a toilet facility and septic tank outfield on the property (refer building consent ABA-2008-533). The shed complied with district plan performance standards for non-residential buildings and resource consent was not required.
- [4] A copy of the building consent plans are attached as Appendix 1.

DESCRIPTION OF PROPOSAL

- [5] The applicants, Mr and Mrs Steven and Leah Greer, seek resource consent for the conversion of the shed into a residential unit. The shed is located approximately six metres off the western boundary adjoining 482 Riccarton Road, and resource consent is required because the shed does not comply with a district plan performance standard for residential units.
- [6] The application plans indicate that a three bedroom dwelling is proposed, with the living areas oriented to the north and east. There is a gravelled parking area to the south and east of the shed, and a concrete water tank immediately

to the north. The existing building is self-serviced for water supply and on-site effluent disposal.

- [7] A copy of the application is attached as Appendix 2.

DESCRIPTION OF SITE AND LOCATION

- [8] The subject property is a 2.0002ha site. It is rectangular in shape and generally flat, and is accessed from Riccarton Road West via right of way easements over the adjoining properties at 134 School Road South and 482 Riccarton Road West. It is legally described as Lot 1 Deposited Plan 345233, held in computer freehold register 185365.¹
- [9] The property is part of a large tract of Rural-Residential land in North Taieri, featuring a number of 2ha blocks. Housing and accessory buildings in the area are generally new and well presented. As noted in the application:

Dwellings in the area are generally built on a single level and relatively expansive; the subject building being one of the more modest in the vicinity.

ACTIVITY STATUS

- [10] Dunedin currently has two district plans: the Operative Dunedin City District Plan (the Operative Plan), and the Proposed Second Generation Dunedin City District Plan (the Proposed Plan). Until the Proposed Plan 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.

Operative Plan

- [11] The subject site is zoned **Rural Residential**. The hazard information held by the council indicates the property is within an area where intensified shaking and liquefaction during a seismic event, land stability and flooding/overland flow paths have been identified as potential issues.
- [12] Rule 6.6.1(ii) provides for residential activity at a density of one residential unit per site, provided that the minimum area of the site is not less than 2ha, as a **permitted activity**, subject to compliance with the performance standards set out under Rule 6.6.2.
- [13] The proposed conversion of the shed to a dwelling fails to comply with the following rule:
- Rule 6.6.2(i)(b)(i) which requires a side yard setback of ten metres for residential activity. The proposal breaches the setback requirement by approximately four metres on the south west boundary.
- [14] In accordance with Rule 6.6.4(i), a permitted activity that fails to comply with the conditions contained within Rule 6.6.2 is considered to be a **discretionary (restricted)** activity. The council's discretion is restricted to consideration of the criteria with which the proposal fails to comply.

¹ There is a consent notice registered on the title, but it dates back to a previous landholding and should have been removed when the current property was created, because the subject site is outside of the land referred to in the consent notice.

Proposed Plan

- [15] The subject site is zoned **Rural Residential 1** and is subject to the following overlays:
- Hazard 3: Flood
 - Swale Mapped Area – flood hazard area 14A
 - Otago Regional Council Designation D218 (East Taieri Drainage Scheme)
- [16] Rule 17.3.3.10 determines that the proposed land use is a **permitted activity**. Development activity rules apply only to new buildings and structures, and there do not appear to be any requirements in terms of the conversion of an existing building.
- [17] At the time of assessing this application, the relevant rule provisions of the Proposed Plan have not been given effect or made operative, and are subject to submissions and could change as a consequence of the submission process. Accordingly, the council need not have regard to the rule provisions of the Proposed Plan as part of the assessment of this application.

Overall Activity Status

- [18] Overall, having regard to both district plans, the proposal is considered to be a **discretionary (restricted)** activity, in accordance with the Operative Plan.

NOTIFICATION AND SUBMISSIONS

- [19] No written approvals were submitted with the application.
- [20] After initial consideration of the application, it is considered that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.
- [21] The Resource Management Act sets out the process for determining whether a person is an affected person in Section 95E(1), which reads:
- 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).*
- [22] In the context of the permitted baseline being a setback of 6m for a farm shed and 10m for a dwelling, and having visited the site and looked at the shed/dwelling from within the site and from the adjoining property at 482 Riccarton Road, the effects associated with the proposal were considered to be minor, but not less than minor.
- [23] It was therefore determined that the effects of the proposal would be limited to the owners of the vacant section at 482 Riccarton Road.
- [24] The written affected party approval of all these parties was not obtained and the application was therefore notified on a limited basis on 5 October 2016. A copy of the application was sent to the owners of 482 Riccarton Road, with the closing date for submissions being 4 November 2016.
- [25] A submission in opposition to the proposal was received by the close of the submission period. The submission is summarised in the table below, and a full copy of it is attached as Appendix 3.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
	Oppose	▪ Provides details of the background to their purchase of the neighbouring property at 482 Riccarton Road, and the resource consent obtained to establish two residential units within a single building on that property ▪ Notes the proximity of their proposed dwelling to the boundary shared with 480 Riccarton Road, and describes the proposed residential use of the shed as "an unexpected and unwelcome intrusion on our property." ▪ Suggests granting consent to the proposal will set a precedent and undermine the integrity of the plan. ▪ Comments on the presence of a scheduled drain within 482 Riccarton Road and suggests the applicants' current use of the subject property does not comply with Otago Regional Council bylaws. ▪ Suggests the original building consent issued was for a farm shed with toilet and septic outfield, and that structural work to convert it to a dwelling has been undertaken without consent. ▪ Believes the proposal will have adverse effects in terms of: ○ the amenities and quiet enjoyment of their own property ○ pecuniary losses in relation to the value of their property, and responsibilities in respect of the scheduled drain ○ the substandard appearance of the subject property compared to surrounding properties ○ its bulk and location and the intensification of activity that has occurred within the building ○ disposal of wastewater from the shed into the scheduled drain ○ its location within a flood zone and proximity to a scheduled drain ○ visual interaction and noise disturbance ○ delays to their own building project at 482 Riccarton Road until this matter is resolved ○ a hostile social environment ○ other activities that might be undertaken within the subject site.	

		▪ Suggests the applicants would have been aware that the conversion of the shed to a dwelling was not a permitted activity prior to purchasing the property. ▪ Believes the resource consent application contains factual inaccuracies, and that granting consent to it would be unreasonable as it will force them to re-design their own proposed dwelling at 482.	
--	--	---	--

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[26] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) *Any positive or adverse effect; and*
- b) *Any temporary or permanent effect; and*
- c) *Any past, present, or future effect; and*
- d) *Any cumulative effect which arises over time or in combination with other effects-*
regardless of the scale, intensity, duration or frequency of the effect, and also includes -
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[27] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

[28] The permitted baseline comprises any permitted Rural Residential zone activity that complies with the performance standards for the zone. These activities include:

- Farming Activity
- Residential Activity at a density of 1 residential unit per site provided that the minimum area of the site is not less than 2 ha.
- Recreational Activity on land, except for structures in excess of 25m² and organised motorised recreational activities.
- Signs as specified in the Signs Section.
- Accessory buildings

In this instance, the relevant performance standards for a permitted activity are a 10m side yard set-back for a dwelling, and a 6m set-back for a farm shed (not used to house animals).

- [29] As a 2.0002ha site with an existing shed within it, the development of the site for residential activity is a credible and non-fanciful scenario.

Existing Environment

- [30] Section 104(1)(a) directs the consent authority to:

'... subject to Part 2, have regard to–

- (a) any actual and potential effects on the environment of allowing the activity;*

- [31] The Court of Appeal, in *Queenstown-Lakes District Council v Hawthorn Estate Limited* 2006) considered that the word "environment" as used in Section 104(1)(a) to mean:

... the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears that those resource consents will be implemented.

- [32] As it exists now, the subject site comprises a lifestyle block created by a subdivision consent issued in 2004. The site features an existing 14.6m by 10m farm shed with a toilet facility and septic tank outfield, and the balance of land is flat land held in open pasture. The shed has been lawfully established, and is part of the permitted baseline.
- [33] The wider local environment comprises numerous rural-residential lifestyle properties, a number of which are as yet undeveloped (including the adjoining properties at 143 and 165 Tirohanga Road North). The local environment also features an Otago Regional Council scheduled drain which runs along the northern boundary of the site, and within 482 Riccarton Road. The presence of the drain places constraints on development within seven metres of the top of the bank on either side of the drain.
- [34] Two residential units within a single building on the adjacent site at 482 Riccarton Road have been authorised by Environment Court Order.
- [35] It is appropriate and useful to consider this baseline when determining the difference in effects between a permitted activity and the proposed conversion of a farm shed into a residential unit.
- [36] Under Section 104C of the Act, when considering an application for resource consent for a restricted discretionary activity, the council, must consider only those matters over which its discretion is restricted, and if granting consent, can only impose conditions only for those matters over which discretion is restricted. In this case the council's discretion is restricted to:
- The condition with which the application fails to comply, i.e. the 10m side yard set-back required for residential activity.

Assessment of Effects

- [37] The assessment of effects is guided by the assessment matter in Section 6.7 of the Operative Plan relevant to the council's restricted discretion, viz.:
- Bulk and Location (Assessment Matter 6.7.9)

Bulk and Location (Assessment Matter 6.7.9)

- [38] This assessment matter requires consideration of the bulk and location of buildings and their effect upon the amenity values of the site, adjoining sites, adjoining roads and the surrounding area.
- [39] The application suggests the effects arising from the continued residential use of the building are less than those that might be associated with the use of the building as an office and storage shed for agricultural equipment, stating:

The bulk and location aspects of the structure have been lawfully established, and the proposed formal change to the consented activities within it, are relatively benign compared to the effects that could be anticipated from a non-residential building of this nature and scope. The applicant has young children and it is unlikely that loud vehicle and work-shop activities that could otherwise have been undertaken in the building would occur with the building primarily used as a dwelling. The potential for light-spill is dramatically reduced by the windows being curtained.

It goes on to suggest that physical attributes of the building, such as "...the height of the building being reasonably modest and the subdued tones of the structure allowing it to blend into the background when viewed from the neighbouring property" will ensure that the conversion of the building to a residential unit would have "minimal effect on neighbouring properties".

The application also suggests that, as a consequence of the presence of the ORC scheduled drain within 482 Riccarton Road, "...the closest that a new dwelling on [482 Riccarton Road] could be constructed to the boundary is 12.6m, effectively increasing the minimum separation between the two dwellings."

- [40] The submission in opposition to the proposal perceives the use of the shed for residential activity as "...an unexpected and unwelcome intrusion on our property." It states:

The close proximity of the neighbouring shed forces visual interaction and noise disturbances as already experienced on our visits to site. This will affect the way we use our home and the outdoor space in the future and gives rise to a conflict with our existing consent. If the proposal is approved it would result in our life time loss of privacy, quiet enjoyment and solitude.

- [41] The Rural-Residential zone set-back rules exist to protect the amenity values of adjoining properties, while providing for low density residential development in a semi-rural environment.
- [42] In this instance, any effects associated with the bulk and location breach are confined to the subject site and the adjoining property at 482 Riccarton Road. The chief impacts on amenity values arising from the bulk and location of the shed are related to the intended use of the building, rather than its actual physical form and presence four metres within the set-back. (i.e. the physical effects associated with the built form of the shed and its proximity to the boundary are an established component of the permitted baseline, and should be disregarded.) The relevant effects for consideration are those associated with the residential use of the buildings, namely the "visual interaction and noise disturbances" alluded to in the opposing submission.
- [43] On the matter of noise disturbance, Mr Robinson has suggested that the noise associated with the residential activities of a young family will be more benign than that of "...vehicles entering and exiting the four large vehicle bays, as well as servicing and maintenance activities common to farm vehicles and

machinery". I tend to agree with this observation, and also consider that the difference in levels of noise disturbance between the proposed residential unit and what might occur in association with a permitted activity (such as a dwelling four metres further back within the site) is likely to be minimal.

- [44] Notwithstanding this, the level of activity, and general comings and goings associated with a residential unit will be higher than those of a farm shed which, on a lifestyle property, is likely to be more incidental. On this matter of activity and "visual interaction", the statement from the applicants included with the application documentation suggests that trees planted along their boundary provide screening between their property and that of the submitters. They indicate also that further plantings, or a fence, are contemplated, to enhance privacy.
- [45] The submitters dispute the level of screening provided by the trees, noting that they are deciduous. They also suggest that the existing trees and any further plantings or fence could be at odds with the ORC bylaw in respect of the scheduled drain.
- [46] During a visit to the site in August, I confirmed that the trees are indeed deciduous, and thus that any screening provided by them is limited to when the trees are in leaf. Nonetheless, in my view, further (evergreen) plantings along the boundary would provide good mitigation of the "visual interaction" that is of concern to the submitters.
- [47] I have considered the ORC bylaw discussed in the submission² and note that (as indicated by the submitters) Section 3.1.c.ii of the bylaw prevents the planting of trees within seven metres of the top of the bank of the drain. There are no limits or controls on the establishment of shrubs or other plantings however. Therefore, should the committee be of a mind to grant consent to the proposal, it is recommended that a consent condition be included requiring that screening landscaping be undertaken, including the provision of a landscape plan that details the numbers and species of shrubs. It is considered that such landscaping will provide good mitigation of any visual effects associated with the proximity of residential activity to 482 Riccarton Road.

Effects Assessment Conclusion

- [48] Overall, any effect on the amenity of the surrounding area, and of the neighbouring property at 482 Riccarton Road specifically, arising from the side yard breach of the proposed residential unit can be appropriately mitigated by conditions of consent so as to be acceptable. Effects will be comparable with the level of effects that might occur in association with a permitted activity.

OBJECTIVES AND POLICIES ASSESSMENT

- [49] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of both the Operative Plan and the Proposed Plan were taken into account when assessing the application.

Operative Plan

- [50] **Objective 6.2.1 and Policy 6.3.4 (Rural Zones Section)** which seek to ensure that the ability of the land resource to meet the needs of future generations is maintained, and that Rural Residential zones are located in areas able to accommodate such development without significantly altering or adversely affecting the character and amenity of rural area.

² The Otago Regional Council Flood Protection Management Bylaw 2012

The subject site is part of a substantial tract of land in the North Taieri which has been specifically zoned to provide for Rural Residential activities. As such, residential use of this property is anticipated by the district plan, and the proposal is consistent with this objective and policy.

- [51] **Objective 6.2.2 and Policy 6.3.6 (Rural Zones Section)** which seek to maintain and enhance the amenity values and character of the rural areas, and avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.

The effects associated with the proposed conversion of a farm shed to a residential unit are comparable to those associated with a permitted activity, and a consent condition is included to improve the screening between the subject site and the adjoining property at 482. Compliance with this consent condition will ensure that the proposed use of an existing farm shed for residential activities is consistent with this objective and policy.

Proposed Plan

- [52] The objectives and policies of the proposed plan must be considered alongside the objectives and policies of the operative plan. The following objective and policy of the proposed plan were considered to be relevant to this application:

- [53] **Objective 17.2.1 and Policy 17.2.1.1 (Rural residential Zones Section)** which seek to ensure that the rural residential zones enable lifestyle blocks, hobby farms and associated residential activities as the appropriate place in the rural environment for these to occur, and provide for a limited range of other compatible activities.

See [50] above.

- [54] **Objective 17.2.2 (Rural Residential Zones Section)** which seeks to ensure that activities in rural residential zones maintain a good level of amenity on surrounding rural residential properties, residential zoned properties and public spaces.

See [51] above.

- [55] **Objective 17.2.3 and Policy 17.2.3.1 (Rural Residential Zones Section)** which seek to ensure that the character and amenity of the rural residential zones are maintained, elements of which include land maintained and managed for farming, grazing, conservation and rural residential activities. Buildings are to be set back from the boundaries and of a height that maintains the character and visual amenity of the rural residential zones.

The subject building was established as a farm shed which is a style of structure that might be reasonably expected in a rural-residential environment. Effects associated with the conversion of the building to a residential unit will be managed by conditions of consent, to ensure that potential effects on the amenity of the adjacent property are mitigated. The proposal is therefore consistent with this objective and policy.

Overall Objectives and Policies Assessment

- [56] Overall, the above assessments of the objectives and policies of both plans indicate that the proposal is consistent with the relevant objectives and policies of both the operative plan and the proposed plan.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [57] Section 104(1)(b)(v) of the Act requires that the council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998 and is currently under review. The Otago Regional Council released its decisions on the proposed Regional Policy Statement (PRPS) on 1 October 2016 which, at time of writing this report, were still within the appeal period.
- [58] There is an ORC scheduled drain within and adjacent to the subject site. While the existing trees along the boundary of the subject site are within seven metres of the top of the bank of the drain and are potentially at odds with the bylaw, it is possible to carry out plantings that comply with the bylaw, as promoted in the recommended consent conditions. The proposal is therefore considered to comply with the ORC *Flood Protection Management Bylaw 2012*, and as such is deemed to be consistent with the PRPS.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [59] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This includes the ability of the proposal to meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Furthermore, the matters of national importance in Section 6 must be recognised and provided for, and particular regard must be had to the matters listed in Section 7.
- [60] The following sections are of particular relevance to this application:
- 5(2)(c) - *avoiding, remedying or mitigating any adverse effects of activities on the environment*
 - 7(c) - *the maintenance and enhancement of amenity values and*
 - 7(f) - *the maintenance and enhancement of the quality of the environment.*
- [61] With regard to these sections of the Act, the above assessment of effects has concluded that that overall, the effects of the proposal on the existing character, amenity and quality of the surrounding environment will be acceptable when considered in the context of the receiving environment and the provisions of the Operative Plan as they relate to the Rural-Residential zone. Accordingly, I consider that overall, the proposal is consistent with the relevant Part 2 matters detailed above.

Section 104

- [62] Section 104(1)(a) states that the council shall have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the effects of the proposed conversion of an existing shed to a residential unit would be acceptable.
- [63] Section 104(1)(b)(vi) requires that regard be had to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies of both the Operative Plan and the Proposed Plan.
- [64] Section 104(1)(b)(v) requires the council to have regard to any relevant regional policy statement. In this report it was concluded that the proposed

conversion of an existing structure to a residential unit is consistent with the proposed Regional Policy Statement for Otago.

- [65] Section 104(1)(c) requires the council to have regard to any other matters considered relevant and reasonably necessary to determine the application. Consistent administration and interpretation of the plan by the council is a desired outcome for consents. In this instance, as a discretionary (restricted) activity, it is not necessary for the council to be satisfied that the proposal is a 'true exception'; and the proposal can be assessed on its merits, in the context of the Rural-Residential zone provisions of the district plan.

CONCLUSION

- [66] Having regard to the above assessment, I recommend that the application be granted, subject to appropriate conditions.

RECOMMENDATION

*That, pursuant to Sections 34A(1), 104 and 104C of the Resource Management Act 1991 and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to a **discretionary (restricted)** activity being the conversion of an existing shed to a residential unit that breaches bulk and location performance standards, and to the residential use of that structure, at 480 Riccarton Road West, Mosgiel, legally described as Lot 1 Deposited Plan 345233 (computer freehold register 185365), **subject to** conditions imposed under Section 108 of the Act, as shown below:*

Conditions:

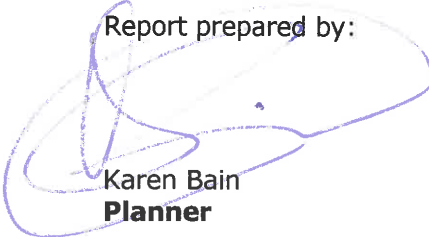
- 1. The proposal shall be undertaken in general accordance with the details submitted with the resource consent application received by the council on 29 July 2016, except as amended by the following conditions of consent*
- 2. A landscaping plan for screening plantings along the boundary adjoining 482 Riccarton Road shall be submitted to rcmonitoring@dcc.govt.nz for approval by the resource consents manager. This plan shall detail the landscaping proposed, including numbers and species of plants. Trees shall not be included in the proposed plantings*
- 3. The landscaping plan and associated plantings required by condition 2 above shall be implemented within six months of the commencement of this consent, and maintained on an ongoing basis thereafter.*

Advice notes

1. Any future extensions or additions to the residential unit must comply with district plan performance standards, or a further resource consent will be required.
2. In addition to the conditions of 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.
3. A resource consent is pertinent to the property 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 responsibility of any party exercising this consent 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.

Report prepared by:

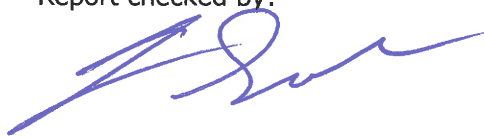


Karen Bain
Planner

11/11/16

Date

Report checked by:



John Sule
Senior Planner

11/11/2016

Date