

Alison J Rutherford
C/- Simon Jenkin
P O Box 5195
Dunedin 9058

Dear Alison

RESOURCE CONSENT APPLICATION – LUC 2017-52, LUC 2017-236 & SUB 2017-5 – 25 ASHTON STREET, MOSGIEL

The above application seeking consent to subdivide the property at 25 Ashton Street, Mosgiel, into two lots and establish a residential activity on each lot was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprised Commissioner Keith Hovell (Chairperson), Commissioner Andrew Noone and Councillor Andrew Whiley, heard and considered the application at a hearing on 28 August 2017.

At the end of the public part of the hearing, the Committee, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

The Committee has **granted** consent to the application on 31 August 2017. The full text of this decision commences below with a consent certificate attached to this letter.

Please note that the issue of this decision on the application could not be completed within the 15 working day time limit prescribed under section 115(2) of the Resource Management Act 1991. The time limit for issue of the decision has been extended pursuant to section 37A(4)(b)(ii) of the Resource Management Act 1991.

The Hearing and Appearances

The applicant, Alison Rutherford, was in attendance and was represented by Simon Jenkin.

Council staff attending were Campbell Thomson (Advisor to Committee), Lianne Darby (Processing Planner), and Wendy Collard (Governance Support Officer).

Submitters in attendance were Andrew Barratt, Robert Ischia and Karen Warrington.

Procedural Issues

No procedural issues were raised at the commencement of the hearing.

Principal Issues of Contention

The principal issues of contention are as follows:

- Whether the subdivision of land zoned for rural purposes represented a sustainable use of land comprising first class soils and resulted in effects on rural character that were no more than minor.
- The extent to which the subdivision was an appropriate means by which to maintain in the long term the values of the registered heritage building.
- Whether approval of residential use of non-complying rural allotments of 3.55 ha and 6.03 ha respectively would blur the rural/urban boundary.
- Whether the circumstances of this proposal represent a “true exception”, and as a consequence whether any approval of the application impacted on the integrity of both the operative and proposed district plans, and public confidence in those documents.

Summary of Evidence

Introduction from Processing Planner

Mrs Darby outlined details of the application, noting that the site comprising 9.6 ha had been created by way of a consent in 2000, and the site contained an historic homestead known as the Johnstone’s Farmhouse that had a Category 2 Heritage New Zealand listing, and was included in Schedule 25.1 of the District Plan. She said that the proposed subdivision will create a vacant site, Lot 1, which will have an area of approximately 6.0 ha, and the existing tree-lined driveway will pass through the centre of the lot. This will continue to provide access to the existing house via a new right of way. A building platform is promoted for Lot 1, on the southern side of the driveway, for a future residential dwelling, and the use of the land for residential purposes required land use consent. She also explained that the existing dwelling will be contained within proposed Lot 2, being a new site of approximately 3.5 ha, and as the lot size was not permitted, the residential use also required land use consent.

Mrs Darby noted the subject site is zoned Rural in the operative District Plan, and Rural-Taieri Plains in the proposed Plan, and the subdivision is a non-complying activity under both the operative and proposed Plans as the minimum site size of 15.0 ha and 40.0 ha respectively is not being met. Likewise, the existing and proposed residential activity of the new lots is also a non-complying activity under both Plans as the minimum site size in the proposed Plan is in force.

Mrs Darby advised the Committee that the various reports from Council departments had generally not raised any issues with regard to the effects of the proposal. The exception was the comments from the Policy Planner – Heritage, who had expressed the view that the proposal would have a harmful impact on the setting of the historic farmhouse. Mrs Darby disagreed with this view, favouring the approach of Heritage New Zealand, which in a submission, expressed the view that the proposed subdivision would provide an appropriate setting for the farmhouse.

Mrs Darby was of the view however, that the proposed subdivision and residential activity will have effects that are more than minor because it would fragment rural land and blur the distinct rural/urban boundary in this location. She also had concerns at the loss of high class soils from productive use, should the proposal be allowed as sought, which would result in farming of the land even less economic than it is now. In that regard, she considered that the effects of the proposal were more than minor.

Mrs Darby advised the Committee that while the proposal was inconsistent or counter to some of the objectives and policies of the operative District Plan, taken as a whole, the proposal was not contrary to the objectives and policies of the operative Plan. However, she concluded that the proposal was contrary to the objectives and policies of the proposed Plan. Given her view with regard to the operative Plan, Mrs Darby advised the Committee that the threshold test of section 104D of the Resource Management Act 1991 was passed, and the Committee had a discretion to grant consent. Having regard to the effects of the proposal, it was her view that the proposal should be declined. In the event that the Committee reached a different conclusion, Mrs Darby provided a draft of conditions and advice notes.

In reply to questions from the Committee, Mrs Darby outlined the activities permitted as of right in the rural zoning, noting these included various types of farming and associated buildings including glasshouses, and woodlots and hedges. She also advised that the Council does not control the colour of buildings in the rural area.

The Applicant's Case

Mr Jenkin provided written submissions to the Committee in which he noted that, excluding the dwelling on the site and associated curtilage which contained a number of trees listed as protected in the operative District Plan, the open pasture had been used for sheep grazing in recent years. Prior to that, organic market gardening had been undertaken on the 2.5 ha near the dwelling. He described the pastoral farming activities on the site as part-time, and coupled with the Heritage New Zealand level of care required for the homestead, the level of management required overall was more than part-time. It was the main contention of Mr Jenkin that the proposed subdivision would enable better land management than at present, and that its rural values would be protected by the applicant agreeing to a "no further subdivision" covenant applying to both of the proposed lots.

Mr Jenkin submitted that the only physical change associated with the proposal would be an additional dwelling within proposed Lot 1, and subject to conditions, including the establishment of screen planting prior to any new dwelling being erected, its effects could be managed appropriately. While requiring consent as a restricted discretionary activity, Mr Jenkin outlined that it would be reasonable to anticipate additional farm buildings being erected on the land, and he noted that these could be up to 10 metres high and as close as 6 metres from the boundary.

Mr Jenkin was of the view that even if Lot 1 was amalgamated with adjoining land, that would not guarantee that it is used more efficiently. He asserted that the building platform proposed represented less than 1% of the subdivision site. He also added that the discussion on possible locations of buildings on Lot 1, as set out in the Section 42A Report, was not relevant because that goes beyond the scope of the consent sought.

Mr Jenkin advised that the applicant had no objection to the reverse sensitivity condition and consent notice in relation to the adjoining railway land, referred to by Mrs Darby. Given the circumstances of the case, Mr Jenkin considered this proposal a true exception.

In reply to questions from the Committee, Mr Jenkin advised that the applicant would accept conditions restricting the dwelling size to a single storey and requiring approval for the final design and appearance of any building, including building materials and colour scheme.

Finally, Mr Jenkin tabled various papers comprising an historic assessment of the property, and a report entitled "Site Assessment for Soil Contamination at 25 Ashton Street, Mosgiel" prepared by Environmental Consultants Otago Ltd. This information was accepted on the basis that it did not relate to the issues that were subject of the submissions, and therefore no parties were considered to be disadvantaged.

Evidence of Submitters

Andrew Barratt commenced by requesting the Committee to allow Murray Harris from Dunedin Rural Development to speak to the proposal. After providing the applicant with an opportunity to comment to this issue, the Committee adjourned to consider the matter. On reconvening the hearing, Commissioner Hovell advised that the Committee is required to adhere to the legal procedural requirements of the Resource Management Act 1991, and that since Dunedin Rural Development had not lodged a submission on the application it could not appear at the hearing. Commissioner Hovell did however indicate that Mr Harris was able to speak to the submission lodged by Mr Barratt, but only in general terms and that no expert evidence could be submitted, as it had not been previously circulated prior to the hearing, and the applicant had not had an opportunity of considering it, and if necessary obtaining rebuttal expert advice. Mr Barratt advised his acceptance of that ruling.

Commissioner Hovell had previously sought advice from Mr Thomson to confirm that as "Our Food Network Dunedin" was an informal group, it was unlikely to have standing under the Resource Management Act. As a consequence, the submission from Mr Barratt should be considered as a personal one in his name. Commissioner Hovell also commented that this did not reduce the standing of the matters raised in the submission, all of which would still be had regard to by the Committee.

Mr Barratt in a written statement set out that the submission was one of principle and he referred to the need to retain and protect high class soils for existing and future generations. He supported the content of the Planner's Report and the recommendation that the application be declined. He did not see a need to expand further on it or the submission lodged. In reply to questions from the Committee, Mr Barratt stated that in its present form, the land still had productive potential. He also added that he did not support outcomes where approval was subject to a large number of conditions, some of which would be difficult to administer.

Mr Harris noted that only 3.6% of the soils in the City area were high class. He also added his support to the matters raised by Mr Barratt.

Robert Ischia spoke to his submission in opposition of the proposal. He commented on the position of the building platform in relation to the topography and the existing driveway, stating that minor work would enable water flows in times of flooding to flow from Ashton Street into the Owhiro Stream. He requested the Committee to take action to initiate the work required. He also requested that the building platform be moved by 5 - 6 metres thereby reducing the required length of the driveway. Finally, he opposed the proposed screen planting proposed as this removed land from productive use.

Karen Warrington spoke to her submission, noting she is a resident of Shaw Street, and that during the July 2017 flooding event, ponding occurred on the portion of the site near her house, and took some time to seep away. In reply to questions from the Committee, she explained that she had purchased her house because of the rural outlook and was opposed to any buildings on the north-east portion of the site.

Heritage New Zealand forwarded a written statement to the hearing, prepared by Jane O'Dea. It was the view of Heritage New Zealand that, as provided for in recommended Condition 3(a) of the subdivision consent, a conservation plan should be prepared for the heritage building on the site, and details were provided as to what that should include. A list was also included of appropriately qualified persons who could prepare a conservation plan. Heritage New Zealand also wished to be consulted on the brief of work and suggested a change to the condition to provide for this.

Heritage New Zealand advised that it supported an advice note on any consent given explaining the procedure to be followed should any archaeological evidence is found on the site.

Processing Planner's Review of Recommendation

Mrs Darby was asked by the Committee if she wished to review her recommendation in light of the evidence presented at the hearing. She advised that she maintained her original recommendation to decline consent

Applicants Right of Reply

Mr Jenkin reiterated the positive aspects of the application and asked for consent to be granted. In relation to matters raised by Mr Barratt, Mr Jenkin submitted that the land will continue to be available for production. In his view, any loss of high class soils would be no different to what can occur as of right, with the construction of accesses and farm buildings. With regard to the concerns of Mr Ischia, Mr Jenkin said that the existing situation is not being made any worse.

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 Committee considered. Regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 5 Manawhenua, 6 Rural/Rural Residential Zones, 13 Townscape, 17 Hazards, 18 Subdivision, and 20 Transportation. Consideration has also been given to the objectives and policies in the following chapters of the Proposed Second Generation District Plan: 2 Strategic Directions, 6 Transportation, 7 Scheduled Trees, 9 Public Health and Safety, 11 Natural Hazards, 13 Heritage, and 16 Rural Zones.

Statutory provisions considered included Sections 5, 6(f), 7(b), 7(c), 7(f) and 7(g) within Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, the principle issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account the application, the submissions lodged, and all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decisions after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken on 25 August 2017, prior to the date of the hearing. The Committee inspected the site and examined the relationship to the neighbouring sites, including those of submitters. This enabled Committee members to hear evidence presented at the hearing with a clear understanding of the physical reality of the site and environmental setting:

Subdivision SUB-2017-5

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and Proposed Plan, the Dunedin City Council **grants** consent to the **non-complying** activity for the subdivision of the land legally described as Lot 1 DP 304960 (CFR20454) into two lots at 25 Ashton Street, Mosgiel, subject to conditions set out in the attached certificate.*

Land Use LUC-2017-52

*That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity for the establishment of new residential activity on proposed Lot 1 created by SUB-2017-5 at 25 Ashton Street, Mosgiel, subject to conditions set out in the attached certificate..*

Land Use LUC-2017-236

That pursuant to section 34A(1) and 104B and after having regard to sections 104 and 104D of the Resource Management Act 1991, and the District Plan and the Proposed Plan, the Dunedin City Council **grants** consent to a **non-complying** activity for the establishment of the existing residential activity on proposed Lot 2 SUB-2017-5 at 25 Ashton Street, Mosgiel, subject to conditions set out in the attached certificate..

Further, having taken into account:

- the interests of any person who may be adversely affected by the time extension;
- the interests of the community in achieving an adequate assessment of effects of a proposal, policy statement or plan, and
- its duty under Section 21 to avoid reasonable delay

the Dunedin City Council has, pursuant to section 37A(2)(a) and 37A(4)(b)(ii) of the Resource Management Act 1991, extended the requirement outlined in section 115(2) regarding the time in which notification of a decision must be given after the hearing is completed.

Reasons for this Decision

The Committee noted that there was no dispute that the proposed subdivision and associated land use consents were all a non-complying activity, and that it was necessary for the proposal to pass the "gateway test" of section 104D of the Resource Management Act 1991. This required that either the environmental effects of the proposal were no more than minor, or the proposal was not contrary to the objectives and policies of the operative and proposed District Plans when assessed as a whole.

It was the advice of the processing planner, Mrs Darby, that the proposal passed the gateway test by virtue of the proposal not being contrary to the objectives and policies of the operative when assessed as a whole, notwithstanding that it was contrary in her view to some of the objectives and policies. However, it is the understanding of the Committee that an application must not be contrary to the objectives and policies of both the operative Plan and proposed Plan. The Committee accepts the advice of Mrs Darby that the proposal is contrary to the objectives and policies of the proposed Plan, and as a consequence, the objectives and policies limb of the gateway test is not met in this case.

It was the considered view of the Committee that the proposal passed the gateway test in relation to the effects of the proposal. In reaching this view, the Committee initially considered the advice of Mrs Darby, noting that at her paragraph 149 she expressed concern at the effect on the rural productivity of the land and high class soils, and she also considered there to be a risk of blurring the urban/rural divide at this location, which she considered a very distinct boundary.

In reply to questions from the Committee, Mrs Darby stated that the erection of a dwelling on proposed Lot 1 would compromise the ability of machinery to operate on the land. Given current technology, the Committee did not accept this as a compelling reason. Nor did the Committee accept that approval of a dwelling on proposed Lot 1 would have an adverse effect on the loss of high class soils that was more than minor. The Committee reached this view taking into account the provisions of the operative District Plan which permitted the erection of glasshouses, forestry and shelter planting, all of which could remove greater areas from productive use than what was proposed. The Committee also accepted the submission of Mr Jenkin that the area proposed for the dwelling was approximately 1% of the site area, and of a lesser area that could be lost to productive use by the erection of permitted accessory buildings for farming on that land. To ensure that the extent of high class soils retained is maximised, the Committee concluded that all farm related buildings should also be located within the identified building platform.

In this case, and given the matters above, the Committee did not accept the general philosophical argument of Andrew Barratt, that the loss of high class soils would give rise to an effect that was more than minor. The Committee noted that the only rule in the operative Plan regarding high class soils [Rule 6.5.3(viii)] limits its effect to require consent to remove such soils from a site. For the avoidance of doubt, a condition has been included to this effect. Assessment Matter 6.7.11 requires regard to be given to the extent to which soils, and in particular high class soils, will be taken out of production. The Committee is satisfied that in this case that such an impact is less than minor, and that in balancing heritage and soil issues, it is the heritage values in this case that are the more significant.

Taken as whole, the Committee did not accept that there was a strong rural/urban divide adjacent to the railway. The curving nature of the drive access to the house and the presence of trees along this route creates an enclosed area and in the Committee's view the land between the driveway and the rail line, subject to appropriate conditions, is suitable for limited development without impacting on the rural amenity. In part, this is achieved by the vegetation already present, but also by planting proposed by the applicant.

The Committee agreed that there is a strong urban/rural divide along the north-eastern (Shaw Street) boundary of the site. However, it noted that there was no intent to locate the dwelling or any associated buildings in that area. The Committee also agreed with the view expressed by Karen Warrington that the rural amenity and character of that area should be protected, and as a consequence has included a condition of consent that excludes farm buildings from this area as well. Taking this condition into account, the Committee concluded that any impact on the urban/rural divide would be less than minor, and with the applicant agreeing to a condition relating to the appearance and colour of buildings on the site, the Committee concluded that the effect on amenity of any buildings erected within the approved building platform would be less than minor. Finally on this issue, had approval been sought to erect the dwelling on the land near Shaw Street, either as part of this application or associated with a separate lot, the Committee is strongly of the view that consent would have been declined, and that the open rural character of area north of the tree-lined drive way should be retained in the long term.

Overall, the Committee considered the potential for adverse environmental effects arising from the proposal to be less than minor.

In having regard to its discretion as to whether consent should be granted to the application, the Committee gave particular regard to the potential impacts on values of the registered heritage building on the site and its environs. It considered such impacts to be positive and consistent with section 6 of the Resource Management Act. This was reinforced by the willingness of the applicant to comply with the requests of Heritage New Zealand, including the preparation of a Heritage Management Plan.

The fact that the building is registered by Heritage New Zealand is a significant factor that sets this case aside from others that may arise in the future. The applicant has a clear desire to ensure that the heritage values of the building and its environs, to which she has had an association over an extended period of time, are protected in the long term. Mrs Darby expressed concern that other subdivision proposals could be promoted on the basis of protecting heritage buildings. However, it is unlikely that such buildings will be registered with Heritage New Zealand, and listed in the district plan, and be located immediately adjoining the urban boundary. The Committee is aware of a number of older dwellings in the wider rural area but their situation and the size of the site on which they are located differs from the circumstances of this case. In the Committee's view, the current proposal is the most effective resource management means by which to maintain in the long term the values of the registered heritage building, and the Committee is satisfied that the circumstances of this proposal represent a "true exception", and approval of the application will not impact on the integrity of the operative or proposed District Plans, and public confidence in those documents.

Overall, the Committee concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

In considering amenity issues, the Committee noted that there was no disagreement between the various parties as to the extent of adverse effects of the requested proposal on amenity values. No-one suggested that such effects are more than minor. The Committee agreed with the comment of the Council's Landscape Architect, Barry Knox, that "a modestly designed additional dwelling on the proposed new site closer to the Mosgiel urban area would have no more than minor adverse effect". Conditions have been included to ensure the amenity will be protected, and the applicant agreed to the general content of these at the hearing.

At the hearing, the requirements of the National Environmental Standard relating to risks from soil contamination were noted. On the basis of the report submitted by the applicant, the Committee is satisfied that the site is not a HAIL site, and that the provisions of the NES relating to soil disturbance did not apply to this application.

Robert Ischia expressed concern regarding the position of the building platform in relation to the topography and the existing driveway, stating that minor work would enable water flows in times of flooding to flow from Ashton Street into the Owhiro Stream. He requested the Committee to take action to initiate the work required, but that goes beyond the delegations made to the Committee, which are limited to making a decision on the application lodged. The Committee accepts however, that the creation of the access to the new dwelling may impact on surface water flows in the vicinity following prolonged periods of heavy rainfall. A condition has been included in the land use consent for the dwelling to provide for further consideration of this matter.

Kiwi Rail lodged a submission expressing concern with reverse sensitivity issues. The applicant agreed with Mrs Darby that it was appropriate to include a condition on the consent for the dwelling requiring suitable sound-proofing. The Committee agrees with that approach. Whether there should be a covenant on the title of the property prohibiting the occupants of the dwelling from objecting to any noise or vibration from the operation of the railway was considered by the Committee to be a private matter between the parties, and not one that was appropriate to include by way of a condition on any consent issued.

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 applicant
- 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 Leanne Darby, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Keith Hovell', written in a cursive style.

Commissioner Keith Hovell
Chair
Hearings Committee

Resource Consent Applications

| | |
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| Subdivision Consent | SUB-2017-5 |
| Land Use Consent (for Lot 1) | LUC-2017-52 |
| Land Use Consent (for Lot 2) | LUC-2017-236 |

That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being the subdivision of the subject property and the undertaking of a residential activity on each of the two lots created, subject to the conditions imposed under Section 108 and 220 of the Act, as shown below:

Location of Activity: 25 Ashton Street, Mosgiel

Legal Description: Lot 1 Deposited Plan 304960 (Computer Freehold Register 20454)

Lapse Date: 25 September 2022, unless the consent has been given effect to before this date.

Conditions

Subdivision Consent SUB-2017-5

1. *The proposal shall be given effect to generally in accordance with the revised plan prepared by Simon Jenkin entitled, 'Plan of Lots 1 & 2 being Proposed Subdivision of Lot 1 DP 304960 – CR 20454 – 25 Ashton Street Mosgiel,' dated April 2017, and the accompanying information submitted as part of SUB-2017-5 received by Council on 1 May 2017, except where modified by the following:*
2. *Prior to certification of the survey plan pursuant to section 223 of the Resource Management Act 1991, the applicant shall ensure the following:*
 - a) *If a requirement for any easements for services is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the survey plan.*
 - b) *That right of way A shall be duly created or reserved over Lot 1 in favour of Lot 2, and shall be shown on the survey plan in a Memorandum of Easements. The right of way shall follow the alignment of the existing driveway and shall be at least as wide as the existing fencing to either side of the driveway.*
 - c) *Service easements for the existing services of the house on Lot 2 shall be duly created or reserved over Lot 1 as necessary, and shall be shown on the survey plan in a Memorandum of Easements.*
3. *Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the applicant shall complete the following:*
 - a) *A conservation plan for the management of Johnstone Farmhouse shall be prepared in consultation with Heritage New Zealand, to provide for the ongoing maintenance of the building in accordance with accepted methodology and practice for conservation work. A copy of the plan shall be submitted to the Council's Resource Consent Manager for inclusion in the Council records.*

- b) A plan shall be prepared confirming the position and proposed site development of the building platform for the house site on Lot 1. The plan shall show the dimensions of the building platform, and distances from fixed reference points on the boundaries and adjacent right of way easement. It shall also show the proposed access and related area of screen planting required by condition 3(c) below. The plan shall be attached to the consent notice of condition 3(e) below.
- c) The area of screen planting for the house site of Lot 1 shall be planted out in shrubbery, of a species which will grow to a height and density that effectively screens a view of the house from Ashton Street.
- d) An appropriate floor level for the building platform on Lot 1 shall be determined in accordance with Building Control. It shall be no lower than the existing floor level of Johnstone Farmhouse. This floor level shall be inserted into the consent notice condition of condition 3(e) below.
- e) A consent notice shall be prepared for registration on the title of Lot 1 for the following on-going conditions:

'There shall be only one residential unit constructed on this site in order to maintain the density of development in accordance with the resource consent decision of LUC-2017-52.'

'The dwelling for this site and all accessory buildings, including any farm buildings, shall be fully confined to the building platform as shown on the attached plan.'

'The area of screen planting as shown on the attached plan shall be maintained in perpetuity in order to provide screening of the house. The planting at maturity shall be of a size and density that effectively screens the dwelling from Ashton Street.'

'There shall be no further subdivision of this site so as to create an additional site for the purpose of establishing a new residential activity. Likewise, there shall be no establishment of a second residential unit on the un-subdivided site as noted above. This restriction on subdivision and residential development seeks to maintain the density of development of this land in accordance with that consented by LUC-2017-52.'

'No topsoil shall be removed from the site'.

- f) A consent notice shall be prepared for registration on the title of Lot 2 for the following on-going conditions:

'There shall be no further subdivision of this site so as to create an additional site for the purpose of establishing a new residential activity. Likewise, there shall be no establishment of a second residential unit on the un-subdivided site. This restriction on subdivision and residential development seeks to maintain the density of development of this land in accordance with that consented by LUC-2017-236.'

'No topsoil shall be removed from the site'.

Land Use LUC-2017-52

1. *The proposal shall be given effect to generally in accordance with the revised plan prepared by Simon Jenkin entitled, 'Plan of Lots 1 & 2 being Proposed Subdivision of Lot 1 DP 304960 – CR 20454 – 25 Ashton Street Mosgiel,' dated April 2017, and the accompanying information received by Council on 1 May 2017, except where modified by the following.*
2. *That only one residential unit shall be established on Lot 1 SUB-2017-5.*
3. *The dwelling and any accessory buildings to be established on Lot 1 SUB-2017-5 shall be limited to a single storey and a maximum height of six metres.*
4. *The external cladding of any buildings shall use non-reflective materials, and if painted, a non-reflective finish shall also be provided. The external colour scheme of any buildings shall adopt neutral tones so as to facilitate compatibility with the rural amenity. Details of the proposed colour scheme shall be submitted to the Council's Resource Consent Manager for certification prior to the application for building consent being submitted to the Council.*
5. *Prior to the erection of a dwelling on Lot 1 SUB-2017-5:*
 - a. *The vegetation within the area of screen planting shall be of a height and density to provide an effective screen of the building from Ashton Street to a height of two metres.*
 - b. *Sufficient details of the design of the access to the building platform shall be submitted to the Council so as to establish that the construction and use of the access will facilitate the movement of surface water to the Owhiro Stream.*
6. *The dwelling and all accessory buildings for Lot 1, including any accessory farm buildings, shall be fully contained within the approved building platform as shown on the consent notice plan attached to the property's title.*
7. *Access to the building platform of Lot 1 shall be formed to a minimum width of 4.0m and a vertical clearance of not less than 4.0m high to ensure that the New Zealand Fire Service appliances have sufficient vehicular access to the property.*
8. *The new dwelling on Lot 1 shall have an adequate fire-fighting water supply available at all times in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk to the property. This can be stored in underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1.0m above ground level) which can be accessed by an opening in the top of the tank so that couplings are not required.*
9. *A hardstand area shall be formed beside any tanks installed to meet condition 8 above, so that a fire service appliance can park on it, if so required.*
10. *The dwelling on Lot 1 is to be designed and constructed to ensure that the internal design levels do not exceed 35 dB LAeq(1 hour) inside bedrooms or 40 dB LAeq(1 hour) inside other habitable spaces.*
11. *Topsoil removed for the construction of the vehicle access and dwelling shall be redistributed within the site.*

Land Use LUC-2017-236

1. *The proposal shall be given effect to generally in accordance with the revised plan prepared by Simon Jenkin entitled, 'Plan of Lots 1 & 2 being Proposed Subdivision of Lot 1 DP 304960 – CR 20454 – 25 Ashton Street Mosgiel,' dated April 2017, and the accompanying information received by the Council on 1 May 2017, except where modified by the following.*
2. *There shall be only one residential unit on Lot 2 SUB-2017-5.*

Advice Notices

- 1 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.
- 2 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.
- 3 The lapse period specified above may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 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.
- 5 This is a resource consent. Please contact the Building Control Office, Development Services, about the need for building consent for the work.
- 6 It is advised that the Otago Regional Council should be consulted before works commence to determine if the discharge of stormwater will enter the Owhiro Street and what level of treatment and/or discharge permit, if any, may be required.
- 7 All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
- 8 This consent does not provide for any earthworks for this subdivision associated with the development of the new lots, or the formation of any new access, manoeuvring areas, or retaining walls. Should earthworks on-site breach the performance standards of Section 17.7 of the Operative District Plan, further consent will be required. Land use consent will also be required for any structures, such as retaining walls supporting fill or surcharge, near to boundaries.
- 9 Any changes to the exterior of the existing homestead (B633), or modification to the significant trees on either Lot 1 or Lot 2 (T95-99, 1209 & 1210) are subject to the rule provisions of the Operative District Plan. Under the current Operative District Plan, a resource consent may be required under the Rules set out in section 13.7 for alteration of the building, and Section 15.5 with respect to the trees.
- 10 The consent holder is to ensure that all practicable measures are used to mitigate erosion and to control and contain sediment-laden stormwater run-off from the site during any stages of site disturbance that may be associated with this subdivision.
- 11 The following documentation is recommended as best practice guidelines for managing erosion and sediment-laden run-off and for the design and construction of erosion and sediment control measures for small sites:

- ARC Technical Publication No. 90 Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region, March 1999.
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guide for Small Sites."
 - Environment Canterbury, 2007 "Erosion and Sediment Control Guideline 2007" Report No. R06/23.
- 12 It is advised that in the event of any new development of the new lots, Transport will review the provisions for access and parking at the time of any building consent or resource consent application.
- 13 It is advised that any vehicle access from a road carriageway to the property boundary is over road reserve and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation Operations).
- 14 Buildings built before 1900 or sites which were in use before that time are considered archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that Act for a person to modify or destroy an archaeological site without an archaeological authority. Therefore, prior to commencing any earthworks for the formation of accesses, rights of way, building platforms or other activities, the developer is advised to consult with Heritage New Zealand. The purpose of the consultation is to obtain an archaeological authority if relevant, and/or determine the methodology to be used when undertaking the earthworks with a view to avoiding or minimising potential damage to archaeological sites and/or artefacts.
16. In the event the consent holder discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:
- (i) stop work within the immediate vicinity of the discovery or disturbance; and
 - (ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and
 - (iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work must not recommence without consultation with the Consent Authority.

Issued at Dunedin this 25th day of September 2017



Commissioner Keith Hovell
Chair
Hearings Committee

Appendix 1: Copy of Approved Plans for SUB-2007-5:
 (Scanned image, not to scale)

