

04 April 2018

Alistair Wallace and Samantha Jacqueline Montgomerie  
C/- Cubitt Consulting Ltd  
4 Norfolk Street  
St Clair  
Dunedin 9012

**Attention: Allan Cubitt**

Dear Mr Cubitt

**RESOURCE CONSENT APPLICATION – SUB-2017-74, LUC-2017-407, LUC-2017-548  
and LUC-2017-555 34 GORMAN STREET MACANDREW BAY**

The above application for subdivision and land use consent at 34 Gorman Street, Macandrew Bay, Dunedin, was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprising Commissioners Matthew McCallum-Clark (Chairperson), Louise Taylor, and Rosalind Day-Cleavin, heard and considered the application at a hearing on 8 March 2018.

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.

Prior to the commencement of the hearing, a site visit was undertaken by Commissioners Louise Taylor and Rosalind Day-Cleavin. Commissioner Matthew McCallum-Clark (Chairperson) undertook a site visit following the Hearing, accompanied by Commissioner Rosalind Day-Cleavin.

The Committee has **declined** consent to the application. The full text of this decision commences below.

**The Hearing and Appearances**

The applicant was represented by:

Alistair Montgomerie (Applicant)  
Allan Cubitt (Consultant Planner)  
Mark Walrond (Geotechnical Engineer)  
Hugh Forsyth (Landscape Architect)

Council staff attending were:

Campbell Thomson (Senior Planner/Committee Advisor)  
Amy Young (Planner)  
Barry Knox (Landscape Architect)  
Lee Paterson (Geotechnical Engineer, MWH)  
Wendy Collard (Governance Support Officer)

Submitters in attendance included:

Lala Fraser on behalf of Save the Otago Peninsula Society Inc  
Craig Werner  
Regan Boucher

### **Procedural Issues**

The Chairperson noted that the Committee had issued a minute accepting the late submission from Janet Cox. No other procedural issues were raised by the parties.

### **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
- Whether the subdivision and residential development of land zoned for rural purposes resulted in effects on rural character and amenity that were no more than minor
- Whether the landscape and/or ecological values compared with the existing environment (noting an existing resource consent LUC-2008-454 requires more area of planting on the subject site than is proposed by the subject application) would, as a net effect, be enhanced
- Whether the subdivision and residential development of land zoned for rural purposes and located within a Landscape Management Area resulted in effects on landscape values that were no more than minor
- The extent to which the subdivision and residential development of land zoned for rural purposes would contribute to the cumulative loss and fragmentation of rural land
- Whether the circumstances of this proposal represent a "true exception", and therefore whether any approval of the application would set an undesirable precedent

### **Summary of Evidence**

#### ***Introduction from Processing Planner***

Mrs Young outlined details of the application noting that the proposal would result in the subdivision of an 18.49 hectare rural zoned site into three lots, all under the minimum lot size for land within the Rural zone. Mrs Young advised that the site is located at the edge of the Macandrew Bay suburb in Dunedin on the western slopes of the Otago Peninsula. The site contains one dwelling and detached garage and four farm accessory buildings. The site is predominantly in pasture with large mature shelterbelt trees planted in distinct rows across

the site, some of which are located close to the western boundary and the existing residential sites along Wharfdale Street. The site has rolling, sloping topography beginning at a contour of 50m from the northwest corner of the site, up to 160m at the southeast corner of the site. The site has two physical road frontages at the termination of Gorman Street and Porterfield Street.

Mrs Young explained the history of the site and noted that existing dwelling was established on the site (formerly with the address 44 Porterfield Street) in 2004 as a small self-contained cottage/garage via a land use consent RMA-2004-0260 which approved the establishment of the dwelling within a landscape management area. The existing dwelling in its current form was authorised by a land use consent in 2008 (LUC-2008-454) which approved the addition to the existing dwelling within a landscape management area subject to conditions. One of the conditions was that landscaping required by RMA-2004-0260 be continued.

Mrs Young noted that some of the landscape planting required by this condition for the existing house has been established, including areas of planting surrounding the dwelling and a large area of planting in the gully to the south of the dwelling (approximately 100m from the southern boundary of proposed lot 1). However, Mrs Young further noted that the full extent of this landscape planting has not yet been established and it would cross the boundaries of proposed Lots 2 and 3. The site is bound to the northern and eastern boundaries and part of the southern boundary by a large 121 hectare rural block of land. The remaining portion of the southern boundary is bounded by a 13.79 hectare rural zoned site containing one residential unit. The western boundary is bounded by twelve Residential 1 zoned sites ranging in site area between 540m<sup>2</sup> up to 1,300m<sup>2</sup>.

Mrs Young noted that the subject site is zoned Rural in the Operative Dunedin City District Plan and most of the site is located within the North West Peninsula Landscape Conservation Area, with the exception of a 27-34m wide strip of land running parallel to the western boundary. The Council Hazard records identify the site as subject to land stability landslide hazards of varying degrees of severity. The south east quarter of the site also has an area of High Class Soils. Mrs Young stated that the activity status of the proposal is a non-complying subdivision and non-complying land use activity under the Operative Dunedin City District Plan as each proposed lot fails to meet the minimum site size requirements in the Rural Zone and the minimum site size for residential activity of 15 hectares.

In terms of the Proposed Second Generation District Plan (Proposed Plan), Ms Young noted that the subject site is located in the Rural - Hill Slopes and within the North West Peninsula Significant Natural Landscape: Significant Natural Landscape area. Parts of the site are identified as subject to land instability risks, and as containing High Class Soils. There is a very small portion of a mapped Archaeological Alert Layer overlapping the southern boundary of the site. The Proposed Plan was notified on 26 September 2015 and the rules controlling minimum site size for rural zones were given immediate legal effect at the time of plan notification. Mrs Young confirmed that the relevant land use rules in the 2GP are not yet in effect. Overall, Mrs Young stated that the activity status of the proposed subdivision to be a non-complying activity under the Proposed Plan.

Mrs Young advised the Committee that the various reports from Council departments had generally not raised any issues with regard to the servicing of the new lots and new development, vehicle access or traffic, subject to compliance with the appropriate conditions of consent. With regard to hazards, Mrs Young recommended that if consent was granted, conditions of consent ought to require confirmation by suitably qualified individuals that each new building platform is suitable for development.

Based on her assessments, Mrs Young was of the view that the proposed subdivision and development would not be a sustainable use of Dunedin's physical and natural resources,

particularly in respect of rural character and amenity. Mrs Young emphasised that while the site has limited visibility from public viewpoints, it was her opinion that the proposed subdivision will blur the boundary between the Residential 1 zone and the Rural zone along the peninsula by introducing three undersized sites and two additional dwellings in this area. In her opinion, Mrs Young advised the Committee that any subdivision proposal which fragments an existing Rural-zoned property into three small rural sites needs to have a strong 'true-exception' element to avoid undermining the Operative and Proposed Plans. In her view, there is nothing about this site that sets it aside from many rural sites in this area. It was her view that the promotion of native planting by the applicant may have some positive ecological and environmental effects but would not offset the fragmentation of rural land.

Mrs Young concluded that the likely effects of this proposal could be appropriately mitigated by conditions of consent, so as to be no more than minor in relation to the landscape effects but overall the proposed subdivision of small rural lots is considered to be more than minor in terms of its effects on loss of rural land and cumulative effect. Mrs Young considered the proposal to be inconsistent with many of the objectives and policies of the District Plan relating to amenity and the mixing of land uses and contrary to those objectives and policies of the District Plan and Proposed Plan in relation to the subdivision of Rural zoned land and the maintenance of rural productive land. Mrs Young advised the Committee that in her opinion the proposal does not meet either branch of the gateway test under section 104D of the Resource Management Act and therefore that the Committee is not in a position to consider the granting of consent. It was her view that the proposal should be declined.

### ***The Applicant's Case***

Mr Cubitt opened the applicant's case and provided a brief overview of, and rationale for, the proposed subdivision and residential development on the subject site. Mr Cubitt explained his impression of the surrounding environment consisting of an adjoining property under 15ha and a cluster of smaller rural sites in the immediate vicinity of the subject site, closely associated with the adjoining residential zone. Mr Cubitt confirmed the applicant's expectation that, if granted, this resource consent would essentially cancel the landscape conditions of the existing consent.

Mr Montgomerie spoke and explained the history of the property, the current state of the property, the productive potential of the property, and responded to submitter concerns. As part of his presentation Mr Montgomerie tabled photographs to illustrate the change to the land over time, including past use of the site as a golf course. He also tabled photographs of planting undertaken in the vicinity of the existing dwelling. It was confirmed that the applicant did not wish to be bound by the landscaping condition of the existing consent as the overall land area subject to the landscaping requirements is large and challenging.

Mr Mark Walrond, a Senior Engineering Geologist, made a verbal presentation primarily based on his assessment included in the application documentation. Overall, he was satisfied that the proposal, if appropriately managed, would not result in any adverse effects in relation to slope stability and hazards. During his presentation the Committee noted the absence of any pre-circulated written evidence and expressed concern that his presentation introduced new material relating to the hazards mapping of the subject property associated with the 2GP submission process that had occurred since his assessments lodged with Council on 3 August 2017 and 18 September 2017.

Mr Hugh Forsyth, an experienced landscape architect, tabled and spoke to a summary of his pre-circulated evidence. Mr Forsyth provided a brief overview of the site, character, land use areas, and visibility. Overall, his evidence concluded that the proposal provides for the successful integration of the proposed two new houses into the receiving landscape. He further concluded that the proposal retains the bulk of the potentially usable land in an

accessible and manageable rural holding and that the proposed planting and tree management responds to existing site conditions, potential off-site effects, and is aimed at reinforcing and progressing the process of landscape change that is already underway on site. Mr Forsyth was of the view that the proposed planting would result in a net positive ecological impact when compared with the yet to be fully realised landscaping required by the existing consent. It was his view that the proposed planting would provide an important ecological corridor between the existing and proposed landscaping on the site. Mr Forsyth recommended a range of consent conditions should the applications be granted.

Mr Cubitt spoke to his pre-circulated evidence and responded to a range of questions from the Committee. In the main, he supported the granting of consents to the applications, and considered that it passed both limbs of the Section 104D test, as he considered that the adverse effects were no more than minor and that the proposal was, on balance, not contrary to the objectives and policies.

Mr Cubitt noted that the site is not an outstanding landscape, and reinforced Mr Forsyth's conclusions that the site was not visually prominent and that the landscaping proposed represented at least a neutral position, when compared to the landscaping required under the existing consent, due to the practical difficulties of establishing the planting previously proposed. Mr Cubitt considered that these kinds of development proposals are not particularly common, with his firm having dealt with five or six over the last couple of decades. He did not consider that a precedent would be set by the granting of this application.

Overall, all the applicant's representatives were asked a range of questions by the Hearing Committee and responded in appropriate detail.

### ***Council Expert Evidence***

Mr Knox spoke to his memorandum and responded to questions. Overall, Mr Knox largely concurred with Mr Forsyth, in that the visual effects are not likely to be more than minor. Mr Knox noted the ecological linkages provided to existing indigenous plantings, in the areas of planting proposed in the application. In response to a question, Mr Knox stated that the planting proposed in the application and the planting required by the existing resource consent were equally important.

Mr Lee Paterson (Geotechnical Engineer, MWH) appeared at late notice and spoke to the MWH memorandum and responded to questions. The Panel appreciated Mr Paterson's helpful responses to the evidence presented for the applicant. In particular, Mr Paterson explained the recently published report commissioned by the Otago Regional Council, and the identification of past landslides in the area. He identified that these were historical features, and with appropriate investigation and design, risk could be appropriately managed. Mr Paterson was satisfied that the applicant was seeking and was being provided with appropriate geotechnical advice, such that any residual slope instability risk could be minimised.

### ***Submitter Appearances***

Lala Frazer tabled and spoke on behalf of the STOP submission. Ms Frazer commented that, if approved, this subdivision will fragment rural-zoned land into significantly undersized rural sites and residential development on these sites would blur the rural/residential boundary. STOP submits that this would create an undesirable precedent for similarly zoned land on the upper boundaries of the existing suburbs on both sides of the Harbour. Ms Fraser stated that the Society requests that the Committee decline the application.

Craig Werner tabled and spoke to his submission. Mr Werner focussed on the environmental effects of the proposal on rural land fragmentation and landscape. He was of the view that the proposal is contrary to numerous provisions of the Plan and asked that the Committee decline the application.

Regan Boucher, a resident of the Peninsula, spoke to his submission and commented that he is supportive of the proposal because it will give other families the opportunity to experience living on the Otago Peninsula. Mr Boucher believes the proposal will result in positive landscape planting which in turn will result in positive visual effects in the area and would like to see the application approved.

### ***Processing Planner's Review of Recommendation***

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

### ***Applicants Right of Reply***

Mr Cubitt reiterated the positive aspects of the application and expressed his view that it is appropriate for the consents to be granted.

In relation to the landscaping requirement of the existing land use consent (LUC-2008-454), Mr Cubitt explained the rationale behind the landscaping undertaken on the site to date and provided further justification for why the full extent of this landscape planting had not yet been realised across the boundaries of proposed Lot 2 and Lot 3. Mr Cubitt relied on the landscape assessment provided by Mr Forsyth when reaching the view that the native planting proposed will enhance the natural character and amenity of the area. Mr Cubitt further commented that the evidence from Mr Forsyth and Mr Knox both conclude that the effects of the proposal are less than minor or no more than minor. He reiterated that the landscaping proposed is not 'screening' landscaping and that the landscaping up the gully as required by the existing resource consent was not directly mitigating any effect.

Overall, Mr Cubitt disagreed with Mrs Young's assessment and reiterated his view that the adverse effects were no more than minor.

The meeting adjourned at 3.03 pm and it was noted that the Chairperson needed to do a site visit.

### **Statutory and Other Provisions**

The Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered, with the exception of the National Policy Statement on Urban Development Capacity 2016.

The Committee noted that Sections 104D, 104 and 106 provided the main decision-making framework for the application.

In particular, regard was given to the relevant provisions of the following chapters of the Dunedin City District Plan: 4 Sustainability, 6 Rural, 14 Landscape 17 Hazards, 18 Subdivision, 20 Transportation; and 21 Environmental, and the following chapters of the Proposed District Plan: 2 Strategic Directions, 6 Transportation, 9 Health and Safety, 10 Natural Environment, 11 Natural Hazards, and 16 Rural. Statutory provisions considered

included Sections 5, 7(b), 7(c), 7(f) and 7(g) within Part 2 of the Act. Regard was also given to the operative and proposed Regional Policy Statements for Otago.

### **Main Findings on Principal Issues of Contention**

The Hearings Committee has considered the evidence heard, the relevant statutory and plan provisions, and 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 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 prior to, and following, the hearing. This site inspection added physical reality to the Committee's considerations of the evidence heard at the hearing.

#### Subdivision – SUB-2017-74

*That pursuant to Section 34A(1) and 104B and after having regard where appropriate 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 **declines** consent to a **non-complying** activity being the subdivision of the land legally described as Part Section 69 Block II Survey Order 6099 Otago Peninsula Survey District held in Computer Freehold Register OT 271/67 into three lots at 34 Gorman Street, Macandrew Bay.*

#### Land Use – LUC-2017-407

*That pursuant to Section 34A(1) and 104B and after having regard where appropriate 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 **declines** consent to a **non-complying** activity being the establishment of residential activity on under-sized Lot 1 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

#### Land Use LUC-2017-548

*That pursuant to Section 34A(1) and 104B and after having regard where appropriate 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 **declines** consent to a **non-complying** activity being the establishment of new residential activity on under-sized Lot 2 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

#### Land Use LUC-2017-555

*That pursuant to Section 34A(1) and 104B and after having regard where appropriate 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 **declines** consent to a **non-complying** activity being*

*the establishment of new residential activity on under-sized Lot 3 created by SUB-2017-74 at 34 Gorman Street, Macandrew Bay.*

### **Reasons for this Decision**

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

The Committee agreed that the proposed lots are all undersized for the Rural zone, particularly proposed Lots 1 and 2. The Committee was of the view that the proposed subdivision and residential development will not sustain the potential of the natural and physical land resource because the subject site is rural land and there is no expectation in either the operative or proposed plan that this land will be developed with housing. The Committee was satisfied that the National Environmental Standard (for managing Soil Contaminants) was not relevant to this application.

The Committee was satisfied the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor in relation to landscape, infrastructure, transportation and hazards. With regard to hazards, the Committee noted its concern that the subject site is located within an area identified by the Otago Regional Council as being at risk of landslides. The Committee took comfort in the expert view provided by Mr Lee Paterson, in response to the evidence presented for the applicant, and was satisfied that with appropriate investigation and design any residual slope instability risk could be minimised.

The Committee was satisfied that the proposal will not substantially detract from existing landscape values and that any visual effects resulting from future housing development would be no more than minor subject to mitigation controls. The Committee agreed with the expert view of Mr Knox and the evaluative view reached by Mrs Young that the elevation of the building platforms was critical to this assessment. The Committee noted the consistent views presented by landscape experts in relation to landscape values and associated effects.

Contested expert views were noted by the Committee with regard to the value of proposed planting in the valley area. In the absence of any ecological expert opinion, the Committee did not accept the applicant's view that the proposal would result in a net ecological gain, although the Committee was satisfied that some positive effects may result from the planting of native vegetation and removal of nuisance trees. The Committee considered overall that there was insufficient detail provided by the applicant to determine the extent to which the proposal would result in a net gain or loss in landscape and/or ecological values compared with the existing environment. The Committee was mindful that the existing resource consent requires more area of planting on the subject site than is proposed by the subject application. That said, after visiting the site, the Committee was encouraged by and commends the applicant's significant investment in planting and landscape enhancement on this land. However, the Committee was not satisfied this represented a compelling case in favour of the proposal.

It was the considered view of the Committee that the subdivision and land use would constitute the fragmentation of rural land and reduce the rural amenity of the location and this would result in effects on rural character and amenity that were more than minor, if only

just so. In reaching this view the Committee carefully considered the advice of Mrs Young where she concluded that the proposed subdivision will have adverse effects which are more than minor alongside the clearly expressed views to the contrary of the applicant's advisors.

The Committee accepted the analysis of the objectives and policies of the District Plans set out in the Section 42A report and noted that the proposal was assessed as consistent or inconsistent with many objectives and policies of the Operative and Proposed Plans. The Committee noted the provisions of the Proposed Plan regarding rural subdivision are in effect and are much more restrictive in their intentions for Rural zoned land. Overall, the Committee agreed with Ms Young that the proposal was contrary to the most relevant policy provisions relating to rural character and amenity values. This includes Policies 6.3.1, 6.3.3, 6.3.6, 6.3.7 and 6.3.14 of the Operative District Plan and Objective 16.2.1 and Policies 16.2.1.5 and 16.2.1.7 of the Proposed District Plan. The Committee noted the contrary analysis and conclusions of Mr Cubitt with respect to the Operative Plan, but with considerably less detail in his consideration of the Proposed Plan. The Committee was of the view that the Proposed Plan was more directive in its relevant objectives and policies.

Overall, the Committee was of the view that the proposal did not reach the threshold for further consideration under section 104 of the RMA. However, for completeness, the Committee noted that had the proposal passed the section 105 test, it would have been minded to decline consents to the application, based on the above views, but also after consideration of the additional relevant matters under section 104, these are summarised in the following paragraphs.

The Committee was satisfied that the proposal is generally consistent with the relevant objectives and policies of the Regional Policy Statement and Proposed Regional Policy Statement for Otago.

The Committee was concerned that the proposal, if granted would create an undesirable precedent, and lead to an undermining of the Operative and Proposed Plans. The Committee was mindful of the importance of minimum site size requirements as part of the Operative District Plan, particularly in relation to development of rural zoned land. In reaching this view, the Committee considered that this application represents a common situation that could be replicated on other undersized rural sites in the vicinity of the Harbour and Otago Peninsula where the zone boundaries tend to change from residential to rural at lower heights on the hills without an intervening rural residential area. The Committee reached the view that the granting of consent could result in setting an undesirable precedent, which could result in further fragmentation of rural land on the Otago Peninsula, and other rural zoned land in the district which adjoins residential areas.

Careful consideration was given by the Committee to all the evidence presented to determine if there were factors about the proposed development, subject site and environment, which would set the application apart from other potential applications in a robust and meaningful way. The Committee was not satisfied that the proposal is a true exception.

The Committee was satisfied that natural hazard matters were able to be dealt with, such that the subdivision consent should not be declined under s106 of the RMA.

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

## Right of Appeal

In accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar  
Environment Court  
PO Box 2069  
**CHRISTCHURCH 8140**

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicants.
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Please direct any enquiries you may have regarding this decision to Campbell Thomson, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully



Matthew McCallum-Clark  
**Chairman**  
**Hearings Committee**