
TO: Hearings Committee

FROM: Shane Roberts, Consultant Planner

DATE: 9 November 2020

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2019-623
6366 HYDE-MIDDLEMARCH ROAD, MIDDLEMARCH
L CARRUTHERS

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 9 November 2020. 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.

QUALIFICATIONS AND EXPERIENCE

- [2] My full name is Shane Leslie Roberts. I am employed by WSP in Dunedin as a Technical Principal - Planning. I hold the Degree of Bachelor of Resource Studies from Lincoln University and am a Full Member of the New Zealand Planning Institute. I am also a Certified Hearings Commissioner having completed the Making Good Decisions Training. I have over eighteen years of professional experience in the field of Resource Management Planning and am responsible for the provision of consulting services in resource management and planning to a range of public and private clients including government departments and regional and territorial authorities.
- [3] Of note, since 2010 I have provided consultant planning assistance to the Dunedin City Council processing resource consent applications of varying scale and complexity.
- [4] I visited the site on 30 October 2020.

SUMMARY OF RECOMMENDATION

- [5] For the reasons set out in paragraphs 88-105 below, I consider that the proposal will have less than minor adverse effects. The proposal is consistent with the objectives and policies of the Operative Dunedin City District Plan. There is some tension between the proposal and some key policy directions in the Proposed 2GP; however these are subject to appeal and therefore I have accorded them less weight in my recommendation. As a result, I have concluded that the proposal should be granted.

DESCRIPTION OF PROPOSAL

- [6] Resource consent is sought to establish a dwelling on an undersized site at 6366 Hyde-Middlemarch Road, Middlemarch.
- [7] A building platform is proposed on the site. Initially, the application showed the footprint of a dwelling 100 metres from the Hyde-Middlemarch Road and 47 metres from Milford Street. However, these measurements are denoted with the letters TBC, to indicate the precise position of the dwelling is still to be confirmed. This information on the location of buildings was updated on 3 November 2020, when the applicant provided a plan indicating a 50 x 50 metre platform on the site, located 110 metres from the Hyde-Middlemarch Road (SH87) and 17 metres from Milford Street. This plan was subsequently withdrawn, but I understand the applicant may wish to discuss some limitations with the identified building location (as applied for) at the hearing.
- [8] It is not uncommon for an application to be amended to address submitters concerns, but generally this should be done in a manner that does not increase the level of effects on other parties (unless, of course, they provide written approval).
- [9] A copy of the application, including proposed site plan, as well as further information provided, is contained in Appendix 1 of this report.

DESCRIPTION OF SITE AND LOCATION

- [10] The site is legally described as Section 1 SO 23734 held in Record of Title (ROT) OT14D/1174. The site is 13.83 hectares in area.
- [11] The title of the subject site is part of a larger landholding (with 3 additional ROTs) that appears to be currently managed as a single entity, as a farm. One of the other titles contains a dwelling and outbuildings that has access off SH87. The site itself is flat and roughly rectangular in shape, with frontage to SH87, Milford Street, the Central Otago Rail Trail and another ROT to the north (owned by the applicant). The site is bisected by a low conifer hedge running north / south. The site has an existing farm access from Milford Street. Additionally, powerlines run along the southern frontage of the property.

ACTIVITY STATUS

- [12] Dunedin currently has two district plans: the Operative Dunedin City District Plan, and the Proposed Second Generation Dunedin City District Plan (the "Proposed 2GP"). Until the Proposed 2GP is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent.
- [13] The activity status of the application is fixed by the provisions in place when the application was first lodged, pursuant to Section 88A of the Resource Management Act 1991. However, it is the provisions of both district plans in force at the time of the decision that must be had regard to when assessing the application.

Operative Dunedin City District Plan

- [14] The subject site is zoned **Rural** in the Dunedin City District Plan. No overlays apply to the site.
- [15] The definition of Residential Activity within the District Plan means:

“the use of land and buildings by a residential unit for the purpose of permanent living accommodation and includes rest homes, emergency housing, refuge centres, halfway houses, retirement villages and papakaika housing if these are in the form of residential units..”

[16] The definition of residential unit means:

“... a building or part of a building which is self contained at least in respect of sleeping, cooking, dining, bathing and toilet facilities, where one or more persons live together whether related or not, but excludes units where staff provide for more than 18 residents...”

[17] The proposal is considered to fall within the definition of Residential Activity. Resource consent is required as the proposal does not meet the following rules in the District Plan:

[18] Permitted Activities Rule 6.5.2(iii) 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 15 ha.”

[19] As identified above the site is less than 15ha, therefore the activity is a non-complying activity under Rule 6.5.7(i).

Proposed Second Generation Dunedin City District Plan (Proposed 2GP)

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

[21] The site is zoned **Middlemarch Basin Rural Zone**. The site is not subject to any overlays.

Land Use Activity

[22] The activity falls under the definition of Residential Activity which is defines as:

“The category of land use activities that consists of:

- *supported living facilities (including rest homes, retirement villages, and student hostel)*
- *standard residential (including papakāika); and*
- *working from home.”*

[23] This definition is under appeal with respect to papakāika only.

[24] Standard residential is defined as:

“The use of land and buildings for residential activity at a domestic scale.

For the sake of clarity, this definition includes:

- *short-term house rentals*

- *boarding houses*
- *supported living accommodation (with 10 or fewer residents); and*
- *emergency and refuge accommodation.*

This definition excludes supported living facilities.

Papakaikā is managed as a sub-activity of standard residential.

Standard residential is an activity in the residential activities category."

[25] The land use performance standard under Rule 16.5.2.1.e requires that standard residential activities in the Middlemarch Basin Rural Zone must not exceed the following density limit:

- Minimum site size – first residential activity per site - 40ha.

[26] In this instance the residential activity proposed on the site does not comply with this standard. The activity is therefore a **non-complying activity** under Rule 15.5.2.3. This provision is subject to appeal, hence the discussion of the operative plan provisions above.

[27] I note the applicant's reference to Rule 16.5.2.1.h.ii that provides an exemption for residential activity in the Middlemarch Basin Rural Zone providing the site existed prior to 26 September 2015, is 15 hectares or larger, and the residential activity is established prior to 7 November 2023. Notwithstanding this provision is subject to appeal, the site does not meet the 15ha site minimum therefore the provision does not apply.

Development Activity

[28] The proposal complies with the relevant performance standards that apply to development activities.

Summary

[29] As such the proposal does not comply with the density provisions of the Operative Plan (Rural Zone - one residential dwelling per 15ha) or the 2GP (Rural – Middlemarch Basin Zone - one residential dwelling per 40ha).

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("the NES")

[30] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

[31] It is considered, more likely than not, that no activities have been undertaken on the site that appear on the HAIL. As the site is open farmland, with all associated farm buildings being located on another land title within the overall farm, it is unlikely that there will

have been a history of HAIL activity on the subject land. As such, the National Environmental Standard is not applicable to the proposal.

[32] Overall the application is considered to be a **non-complying activity**.

NOTIFICATION AND SUBMISSIONS

[33] Written affected party approvals were received from parties in the following table:

Person	Owner	Occupier	Address	Obtained
Strath Taieri Agriculture and Rural Tourism Trust	✓	✓	1 Milford Street	27/01/20
Lee & Ann-Marie Bowerbank	✓	✓	22 Milford Street	07/03/20
Nathaniel David Swift	✓	✓	26 Milford Street	13/06/20
Lindsay Carruthers	✓	✓	6335 Hyde Middlemarch Road	27/2/20

[34] In accordance with Section 104 of the Act, where written approval has been obtained from affected parties the consent authority cannot have regard to the effects of the activity on that person.

[35] 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.

[36] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties at: 62 Swansea Street, 16 Milford Street and Milford Street. These parties were deemed affected as the proposed dwelling will introduce other elements of land use activity to the site near these properties that do not currently exist, such as increased vehicle movements, outdoor amenity plantings and lawn areas and the general noises associated with residential activity – essentially the domestication of the site. These effects are not anticipated by the plan on the site.

[37] The written affected party approval of all these parties was not obtained and the application was, therefore, notified on a limited basis on 8 September 2020.

[38] Copies of the application were sent to the following parties with submissions closing on Tuesday 6 October 2020:

- 62 Swansea Street
- 16 Milford Street
- 18 Milford Street

[39] One submission was received by the close of the submission period in opposition to the application from Allen Frazer.

[40] A submission from Vivienne Robertson was received by the Council on 14 October (email) and 16 October (hardcopy); the submission is late and the Committee will need to decide whether or not to receive the submission under Section 37 of the Act.

[41] The submissions are summarised in the table below, and a full copy of the submissions is attached in Appendix 2.

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Allen Frazer	Oppose	Location of proposed dwelling is unclear. Request the dwelling be sited no further west than the location specified in Appendix of the Application	No (but if others did would consider a joint case at a hearing).
Vivienne Robertson	Oppose	Site plan is inaccurate, and dwelling will be positioned elsewhere. Blocked views / visual changes. Increased traffic / noise. Loss of privacy.	Yes

ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[42] 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

[43] 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.

[44] As identified above, given the site does not comply with the density requirements for the zone there is no permitted baseline for residential activity on the site under either plan. Notwithstanding this, and as noted by the applicant structures associated with rural activities could be erected at the site which could have effects similar to a dwelling (particularly visual).

[45] The wider receiving environment consists of a mixture of rural, rural residential and residential land uses. This is a direct function of the site being located at the northern extent of the Middelmead township. To the immediate south of the site (across Milford Street) are smaller landholdings with dwellings. To the east is the Central Otago Rail Trail and then beyond that further rural land. To the north is rural land. To the immediate west is State Highway 87 and beyond that rural land.

[46] In terms of the surrounding zoning Milford Street is the boundary between the Township and Settlement Zone of the Middelmead township and the Rural Zone. I also note to the

immediate west and east of the Township and Settlement Zone, is land zoned Rural Residential 1. This Rural Residential zoning does not extend north of Milford Street.

Assessment of Effects

Operative Dunedin City District Plan and Proposed 2GP

[47] The assessment of effects is guided by the assessment matters in both plans.

Bulk, Location, Design and Appearance and Amenity and Character Values (Assessment Matters: Operative Plan 6.7.3, 6.7.9, 6.7.13, 6.7.15) Proposed 2GP 16.12.5)

[48] The proposal will have effects on the amenity of the neighbourhood. I consider the key question is whether these effects are acceptable and in particular whether they will have an effect on those parties deemed to be affected that cannot be adequately mitigated. In particular, several dwellings to the immediate south currently enjoy a rural outlook and a dwelling is not anticipated on the site under both the operative and proposed plans.

[49] In considering amenity effects the rural character values identified for the Rural – Middlemarch Basin Zone in Appendix 7 of the 2GP provide useful guidance. Not all of these are relevant in terms of the effects associated with the proposal however for completeness they are all assessed below.

An open, expansive rural character.

[50] The site is clearly of an open and expansive rural character. The site is flat and aside from a hedge on part of the western boundary it is devoid of other features apart from fencing. In short, it is typical rural pastureland. There is a very clear demarcation between the settlement of Middlemarch and the surrounding rural land, noting there is some development to the north of Milford Street in the form of the library building on the corner of SH87 and Milford Street. The introduction of a dwelling onto the site will change this rural character. The application has been assessed by Council's Consultant Landscape Architect who made the following comments:

"From a wider visual perspective there would still be a reasonable separation between the clearly defined surrounding rural character, and the more urban character of the outskirts of Middlemarch. Traffic going along the Hyde-Middlemarch highway will be sufficiently distant from the proposed dwelling and there is an intervening shelterbelt to ensure that viewers from vehicles would not readily see the proposed dwelling. This would be particularly so if the view was to be softened with appropriate vegetation around the house and access way.

In my opinion, notwithstanding wider planning considerations such as activity status and cumulative effects of subsequent similar activities, the proposed dwelling will potentially have no more than a minor adverse effect on the local visual character and visual amenity."

[51] I note the landscape architect has reached the view that any effects on local visual character and visual amenity will not be more than minor. Given the scale of the proposed activity in terms of the wider rural environment, I would agree with this assessment.

The presence of highly productive land, including high class soils, which are sometimes subject to drought.

- [52] I note the site is currently used for agricultural activity as part of a wider rural landholding. The proposed activity will result in the loss of a relatively small portion of productive land. I do note that in terms of the applicant's landholdings in the locality, the subject ROT is the only one that does not contain areas of mapped high class soils.

A long tradition of pastoral farming, now predominantly beef, sheep and deer. Roads, tracks, fences and shelterbelts form a typical rural patchwork on the land which echoes this tradition.

- [53] The site is currently farmed. The application states that the site is used for pastoral grazing activities including the growing of grass for hay, baleage and/or silage. Whilst a dwelling will reduce the amount of land available on the site for this, given its 14ha size it is likely that these activities will be able to continue. There are several characteristics with respect to the site – tracks, fences and shelterbelts that currently exist on the site and are not proposed to be removed by the applicant as part of the application.

Human made elements which emphasise local character and contribute to visual quality. Heritage buildings, drystone walls and post features are cultural characteristics of this rural landscape.

- [54] The proposed dwelling will introduce a further human made element onto the site. I note council's Consultant Landscape Architect has not raised any concerns with respect to the proposed dwelling having an impact on local character (that is more than minor). The site does not feature a heritage buildings or drystone walls. With regard to lost features these all appear fairly modern, noting that at least part of the Milford Street boundary is fenced using former railway irons.

Tourist industry centred around the Central Otago Rail Trail.

- [55] The proposed activity does not have a tourist focussed purpose, noting the proximity of the site to the Central Otago Rail Trail.
- [56] In terms of the proposed dwelling, an oblique north elevation is supplied on page three of the application. This indicates a modern single story dwelling with a pitched roof and north facing verandah. The dwelling consists of a number of similar modular forms. No information regarding cladding or colour has been supplied.
- [57] Further to this the application has indicated that landscaping is proposed, however has not provided any details regarding this, preferring to deal with this via a condition of consent.

Transportation (Assessment Matter Operative Plan 6.7.24, Proposed 2GP 6.13.2.1)

- [58] The application was referred to Council's Transportation department for comment. The Planner, Transportation notes that the vehicle access is proposed to be will be via Milford Street, though the exact location is not shown in the application. He advises that Milford Street is classified as a Local Road in the 2GP Road Classification Hierarchy, and that he considers that the traffic generated by the development can be easily assimilated into the transport network, without resulting in any noticeable safety or efficiency effects.
- [59] The Planner, Transportation advises that the vehicle access must be designed and constructed to comply with the vehicle access standards contained within Rule 6.6.3 of 2GP. For clarity, he notes that this requires the following:

- A minimum sight distance of 69m in both directions.

- Separated at least 20m from the Milford Street/Swansea Street intersection.
- A maximum width of 6.0m, and a minimum width of 3.5m (Formed).
- It must be hard surfaced from the edge of the Milford Street road carriageway toward the property boundary for a distance of not less than 5.0m, and be adequately drained.

- [60] The Planner, Transportation advises that the vehicle crossing between the road carriageway and the property boundary is within legal road. It will therefore require a separate Vehicle Entrance Approval from DCC Transport, to ensure that the vehicle crossing is constructed/upgraded in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this approval is not included as part of the resource consent process). This requirement should be included as an advice note in the consent decision certificate, if consent is granted.
- [61] Subject to compliance with the above requirements, the Planner, Transportation considers the proposal to be acceptable from a transport perspective. There are therefore no concerns regarding traffic that would equate to a more than minor environmental effect.

Provision for Stormwater, Water and Sewerage (Assessment Matters Operative Plan 6.7.10, Proposed 2GP 9.8.3)

- [62] Given the rural location of the site, the applicant will need to make provision of on-site provision / collection of water as well as on-site disposal of wastewater and stormwater.
- [63] Further to this, the provision relating to fire fighting as specified by Rules 16.6.1 / 9.3.3 will need to be complied with.

Hazards and Safety (Assessment Matters Operative Plan 6.7.23, Proposed 2GP 11.7.3)

- [64] Section 6(h) of the Resource Management Act 1991 requires the Council to recognise and provide for the management of significant risks from natural hazards, as a matter of national importance.
- [65] The assessment of the risk from natural hazards requires a combined assessment of:
- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
 - (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
 - (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

- [66] It is considered that there are no significant risks from natural hazards that need addressing as part of this application.

Positive Effects

- [67] The proposed activity will have the positive effect of the applicant being able to make use of the existing ROT and construct a new residential unit.

Cumulative Effects (Assessment Matter Operative Plan 6.7.4, Proposed 2GP 16.12.2.1.c)

- [68] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

“... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration”.

- [69] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be ‘cumulative’.
- [70] The proposal is for a single residential on a large property. Whilst there may a minor and localised loss of rural amenity as part of the proposal I do not consider there are any cumulative effects at play here that could be considered more than minor.

Effects Assessment Conclusion

- [71] After considering the likely effects of this proposal above, overall, I consider the effects of the proposal can be appropriately mitigated by conditions of consent so as to be no more than minor. This is based on the siting of the dwelling as lodged.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [72] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [73] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [74] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the Dunedin City District Plan and the proposed 2GP were taken into account in assessing the application.

Dunedin City District Plan

- [75] The following objectives and policies of the Dunedin City District Plan were considered to be relevant to this application:

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Sustainability Section	
Objective 4.2.1 Enhance the amenity values of Dunedin.	The proposed activity will have some minor localised effects on amenity, however, I do not consider these to be adverse to the extent the wider amenity of the Middelmarsh area would not at least be maintained.
Policy 4.3.1 Maintain and enhance amenity values.	
Policy 4.3.8	

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Avoid the indiscriminate mixing of incompatible uses and developments.	There is nothing to suggest residential activity on the site is incompatible with surrounding land uses.
Rural Section	
Objective 6.2.1 Maintain the ability of the land resource to meet the needs of future generations. Objective 6.2.2 Maintain and enhance the amenity values associated with the character of the rural area.	The proposed activity will result in the loss of a small proportion of an existing rural property to accommodate a dwelling. A dwelling on the site will not decrease the ability of the land resource to meet the needs of future generations.
Objective 6.2.5 Avoid or minimise conflict between different land use activities in rural areas.	The proposed dwelling is sufficiently remote from adjacent rural properties to avoid conflict with other rural activities, noting rural activities are proposed to continue on the site in question. I consider the proposal to be consistent with objective.
Policy 6.3.1 Provide for activities based on the productive use of rural land. Policy 6.3.3 To discourage land fragmentation and the establishment of non-productive uses of rural land and to avoid potential conflict between incompatible and sensitive land uses by limiting the density of residential development in the Rural Zone.	The site will be able to remain in a similar productive use to that which exists at present. No fragmentation occurs as a result of the application, and there is nothing to suggest the activity is incompatible with, or sensitive to, surrounding land use.
Policy 6.3.5 Require rural subdivision and activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner which avoids, remedies or mitigates adverse effects on rural character. Elements of the rural character of the district include, but are not limited to: (a) A predominance of natural features over human made features, (b) High ratio of open space relative to the built environment, (c) Significant areas of vegetation in pasture, crops and indigenous vegetation, (d) Presence of large numbers of farmed animals, (e) Noises, smells and effects associated with the use of rural land for a wide range of agricultural, horticultural and forestry purposes, (f) Low population densities relative to urban areas, (g) Generally unsealed roads, (h) Absence of urban infrastructure.	This objective lists a suite of rural character elements. In terms of the proposed activity: Given the size of the site there will be a slight reduction in open space, but generally speaking a predominance of natural features will remain – noting the site is fenced and hedged in a lineal manner for farming. There will be a slight reduction of land used for farming as a result of the proposed activity, however, the site will remain predominantly in pasture, and will possibly also be grazed. Given the findings of the examination of the rural character values, I consider the proposed activity will be at a density that will have some minor effects on the rural character values and visual amenity of the rural zone. Given the site is located on the edge of the Middlemarch township, there are sealed roads and urban infrastructure present; however, these are not ‘added to’ by the proposed activity. I consider the proposed activity to be consistent with this policy.
Policy 6.3.6 Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties. Policy 6.3.14	The proposed dwelling will have an impact on the amenity of the adjoining residential zone through the construction of a dwelling on what is a rural ROT that currently does not contain a dwelling. In essence, the dwelling will be constructed on what is currently an

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Subdivision or land use activities should not occur where this may result in cumulative adverse effects in relation to: (a) amenity values (b) rural character (c) natural hazards (d) the provision of infrastructure, roading, traffic and safety, or (e) Landscape Management Areas or Areas of Significant Conservation Values. Irrespective of the ability of a site to mitigate adverse effects on the immediately surrounding environment.	uninterrupted rural outlook for those properties located nearby in the adjoining residential zone. It may be through appropriate mitigation that this effect could be lessened. I do not consider there are any cumulative adverse effects on amenity values or rural character arising from the proposed development, particularly when regard is had to the fact the site size is only slightly under that permitted by the Operative Plan. The proposed activity will not detract from the amenity of other residential activities in the rural zone. I consider the proposed activity to be partially consistent with this objective.
Hazards Section	
Policy 17.3.2 Control building and the removal of established vegetation from sites or from areas which have been identified as being, or likely to be, prone to erosion, falling debris, subsidence or slippage.	The site is not subject to any mapped hazards. Any other matters e.g. foundation suitability for the ground conditions, are addressed at the time of building consent. I consider the proposal to be consistent with this policy.
Transportation Section	
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The proposed activity will not have any effects on the safety and efficiency of the transport network provided an appropriately constructed access to the site is installed. There is adequate space onsite for any loading or parking required. I consider the proposed activity to be consistent with these objectives and policies.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	

Proposed 2GP

- [76] The objectives and policies of the Proposed 2GP must be considered alongside the objectives and policies of the operative plan. The following Proposed 2GP objectives and policies were considered relevant to this application. Note that those subject to appeal are marked with an asterisk*.

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 2.2.2 Dunedin reduces its reliance on non-renewable energy sources and is well equipped to manage and adapt to changing or disrupted energy supply by having: a. increased local renewable energy generation; b. reduced reliance on private motor cars for transportation; c. increased capacity for local food production; and d. housing that is energy efficient.	With regards to the proposal, the key part of this objective is (c). The site contributes to food production through the agricultural use of the site, and it should be noted that unlike other parts of the applicant's wider landholding the site does not contain areas of high quality soils. The establishment of residential activity on the site will not decrease the potential for food production on the site. I consider the proposal to be consistent with this Objective.
Policy 2.2.2.1 Identify areas important for food production and protect them from activities or subdivision (such as conversion to residential use) that may diminish food production capacity through: a. use of zoning and rules that limit subdivision and residential activity, based on the nature and scale of productive rural activities in different parts of the rural environment; b. consideration of rural productive values, including the location of highly productive land, in identifying appropriate areas for urban expansion; and c. identification of areas where high class soils are present (high class soils mapped area) and use rules that require these soils to be retained on site.	As identified above the site does not contain areas of high class soils. I consider the proposed activity to be consistent with this policy.
Objective 2.3.1* Land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land are: a. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and b. in the case of facilities, able to operate efficiently and effectively.	The site can be used for productive rural activity. The 'loss' of a small area of the site for a dwelling, is not necessarily a competing or incompatible use, and given the location of the proposed dwelling on the site I consider the possibility of reverse sensitivity to be low. I consider the proposal to be consistent with this Objective.
Objective 6.2.3* Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public. Policy 6.2.3.3 Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the safety and efficiency of the transport network. Policy 6.2.3.4	The proposed activity will not have any effects on the safety and efficiency of the transport network provided an appropriately constructed access to the site is installed. There is adequate space on-site for any loading or parking required. I consider the proposed activity to be consistent with this objective and policies.

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Require land use activities to provide the amount of parking necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not practicable, adequately mitigated. Policy 6.2.3.9* Only allow land use and development activities or subdivision activities that may lead to land use or development activities, where: - adverse effects on the safety and efficiency of the transport network will be avoided or, if avoidance is not practicable, adequately mitigated; and - any associated changes to the transportation network will be affordable to the public in the long term	
Objective 11.2.1 Land use and development is located and designed in a way that ensures that the risk from natural hazards, including climate change, is no more than low, in the short to long term.	The site is not shown to be subject to any mapped natural hazards and therefore the risk of any natural hazards is low. I consider the proposal to be consistent with this policy.
16 Rural Zones	
Objective 16.2.1* Rural zones are reserved for productive <u>rural activities</u> and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports <u>farming</u> or which is associated with <u>papakāika</u>. Policy 16.2.1.7* Avoid residential activity in the rural zones on a site that does not comply with the density standards for the zone, unless it is the result of a surplus dwelling subdivision.	Objective 16.2.1. and its associated policies provide a very strong direction with regards to residential activity in the rural zones. In terms of the proposed activity the policy is clear with respect to the circumstances when residential activity is appropriate. In this case the residential activity needs to clearly support farming. The applicant has indicated that that the activity will occupy less than 1% of the site and therefore will be able to support farming activity. The applicant has not stated how the activity <i>directly supports</i> farming, but I consider the residential activity does not, in any meaningful way, detract from the ability to undertake farming on the site. With regards to Policy 16.2.1.7, which is strongly worded, it is clear the only circumstance in which the plan's policy framework envisages residential activity in the zone is where it is the subject of a surplus dwelling subdivision. That is not the case in this instance. I consider the proposed activity is inconsistent with the objective and contrary to the policy.
Objective 16.2.2 The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: the potential for reverse sensitivity in the rural zones is minimised;	Given the location of the proposed dwelling being remote from adjoining rural zoned properties, I do not consider there is a meaningful potential for conflict with activities on adjoining rural zoned sites (i.e. reverse sensitivity). The proposed dwelling will not have an effect on the residential character of adjoining residential

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
b. the residential character and amenity of adjoining residential zones is maintained; and c. a reasonable level of amenity for residential activities in the rural zones	zones, but it will have an impact on the amenity of the adjoining residential zone¹ through the construction of a dwelling on what is a rural ROT that currently does not contain a dwelling. In essence, the dwelling will be constructed on what is currently an uninterrupted rural outlook for those properties located nearby in the adjoining residential zone. It may be through appropriate mitigation that this effect could be lessened. The proposed activity will not detract from the amenity of other residential activities in the rural zone. I consider the proposed activity to be partially consistent with, and partially inconsistent with this objective.
Objective 16.2.3 The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a. a predominance of natural features over human made features; b. a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c. buildings that are rural in nature, scale and design, such as barns and sheds; d. a low density of residential activity, which is associated with rural activities; e. a high proportion of land containing farmed animals, pasture, crops, and forestry; f. extensive areas of indigenous vegetation and habitats for indigenous fauna; and g. other elements as described in the character descriptions of each rural zone located in Appendix A7.	This objective lists a suite of rural character values. In terms of the proposed activity: Given the size of the site there will be a slight reduction in open space, but generally speaking a predominance of natural features will remain – noting the site is fenced and hedged in a lineal manner for farming. The proposed dwelling is similar in style to other modern rural dwellings. There will be a slight reduction of land used for farming as a result of the proposed activity, however, the site will remain predominantly in pasture. The site does not feature any obvious indigenous vegetation (however it is feasible the proposed landscaping could include this). The other elements listed in A7 are discussed in the assessment of effects above, which found that the proposed activity would not detract from those character descriptions for the Zone.
Policy 16.2.3.2 Require residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones.	Given the findings of the examination of the rural character values, I consider the proposed activity will be at a density that that will have some minor effects on the rural character values and visual amenity of the rural zone. As such I consider the proposal to be inconsistent with, but not contrary to the objective and policy.

¹ The Township and Settlement Zone adjoining the site is part of the suite of zones included in the 2GP under Residential Zones (refer 15.1.1.7)

Objective/Policy	Is the proposal Consistent with or Contrary to the Objectives and Policies?
Objective 16.2.4 The productivity of rural activities in the rural zones is maintained or enhanced.	The proposed activity, as identified in the application, will occupy less than 1% of the subject site. I consider that the 'loss' of 1% of the site for rural activities would not result in a noticeable reduction in the productivity of the rural activities on the site. I note the site is currently held in its own ROT, once of several managed by the applicant, which could be sold off individually at any one time – this could also equate to a loss in productivity through a loss in economies of scale. Given the size of the site I do not consider the proposed activity is at a density that will displace rural activities. I consider the proposed activity is inconsistent with this objective and policy.
Policy 16.2.4.4 Require residential activity in the rural zones to be at a density that will not, over time and/or cumulatively, reduce rural productivity by displacing rural activities.	

Overall Objectives and Policies Assessment

- [77] Having regard to the relevant objectives and policies individually, and considering these in an overall way, the above assessment indicates that the application is consistent with the provisions of the Operative Plan and inconsistent with the provisions of the Proposed 2GP.
- [78] It is also important to note there has been a shift in terms of the density outcomes sought by the operative and proposed plans. The operative plan in Policy 6.3.5 requires *activities to be of a nature, scale, intensity and location consistent with maintaining the character of the rural area and to be undertaken in a manner which avoids, remedies or mitigates adverse effects on rural character*, and the Proposed 2GP through Policy 16.2.3.2 requires *residential activity to be at a density that maintains the rural character values and visual amenity of the rural zones*.
- [79] Both policies talk about maintaining character – however, one of the key means by which rural character is maintained – density required for residential activity – has changed markedly from the Operative Plan (15ha) to 40ha (proposed 2GP). As noted by the applicant, the site is only just under the 15 hectare minimum required by the Operative Plan, but far short of compliance in terms of the 2GP – which is under appeal. This shift in what is permitted in the zone means sites that previously would not have required resource consent, now do. It also means sites such as that subject of this application are also now required to apply for consent, and a far short in terms of size the plan envisages.
- [80] There is also the clear thread through the 2GP that requires residential activity to be avoided unless it directly supports farming (Objective 16.2.1 & Policies). I note the site is an existing RoT, that is currently farmed by the applicant as part of a larger landholding. The property could clearly be sold and continue to be farmed as a bare block, but likewise could also be continued to be farmed with a residential unit on it. Whilst having a residential unit on site is not necessary for the site to be farmed, from some perspectives e.g. animal husbandry, a residential unit onsite does directly support farming through increased surveillance of livestock.
- [81] Policy 16.2.1.7 is even more directive – this proposal is contrary to it as this application is not for a surplus dwelling subdivision.

- [82] Taken overall, I consider the proposal is consistent with the provisions of the Operative Plan, and at contrary to key provisions in the Rural Zone of the 2GP. This is a logical outcome given the shift in direction between the two plans.

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

- [83] 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. It has been reviewed and the Proposed Regional Policy Statement was notified on 23 May 2015. On 12 December 2018, several appeals were resolved and most sections of the Proposed Regional Policy Statement became operative from 14 January 2019.
- [84] The application is considered to be generally consistent with the relevant objectives and policies of the Partially Operative Regional Policy Statement 2019, noting that Objective 5.3 and Policy 5.3.1.e refer to “Minimising the subdivision of productive rural land into smaller lots that may result in a loss of its productive capacity or productive efficiency”.
- [85] The proposal will result in a very minor loss of the productive capacity of rural land however this is not through the subdivision of land (site is an existing RoT).
- [86] As such, the proposal is considered to be partially consistent with the relevant objectives and policies of the statement.

DECISION MAKING FRAMEWORK

Part 2 Matters

- [87] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104D

- [88] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of Section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.
- [89] Overall I consider that the actual and potential effects associated with the proposed development will be able to be mitigated by imposing consent conditions so as to be no more than minor and therefore the first ‘gateway’ test of Section 104D is met.
- [90] However, only one of the two tests outlined by Section 104D need be met in order for Council to be able to assess the application under Section 104 of the Act. In order for a proposal to fail the second test of Section 104D, it needs to be contrary to the objectives and policies of both the Dunedin City District Plan and the Proposed 2GP. In order to be deemed contrary, an application needs to be repugnant to the intent of the District Plan and abhorrent to the values of the zone in which the activity was to be established. It is noted that in this instance, the proposal is assessed as being consistent with the objectives and policies of the Operative Plan with the relevant objectives and policies of the Rural Zone. The activity finds distinctly less favour from the policy framework of the 2GP and is clearly contrary to key objectives and policies of the Rural Zone as they relate to the

proposed activity. The proposed development is therefore considered fail to pass the second 'gateway' test outlined by Section 104D.

- [91] In summary, as the application passes one of the threshold tests in Section 104D of the Act and therefore, in my opinion, it is appropriate for the Committee to undertake a full assessment of the application in accordance with Section 104 of the Act. In turn, consideration can therefore be given to the granting of the consent.
- [92] It should be noted that there is not the ability to 'weight' objectives and policies of plans against each other at the Section 104D gateway – the time for this is at assessment in terms of section 104.

Section 104

- [93] Section 104(1)(a) states that the Council must 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 likely adverse effects of the proposed development overall will be minor and can be adequately avoided remedied or mitigated provided recommended conditions of consent are adhered to.
- [94] Section 104(1)(ab) requires the Council to have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects. No offsetting or compensation measures have been proposed or agreed to by the applicant.
- [95] Section 104(1)(b)(vi) requires the Council to have regard 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 the Operative Plan and contrary to key objectives and policies of the Proposed 2GP.
- [96] Regarding the position of weighting of the relevant plans the following points are worthy of consideration. Decisions on the Proposed 2GP have been released and some key provisions in terms of this application are subject to appeal – the density provisions of the Middlemarch Basin Rural Zone in particular. Therefore in this regard, whilst some weight can be given to the 2GP zoning provisions, I consider it is the provisions of the Operative Plan (in relation to zoning) that must carry the most weight.
- [97] Further to this, the key Objective 16.2.1, and key Policy 16.2.7 are both subject to appeal, therefore must also be afforded less weight than those provisions of the Operative Plan.
- [98] A number of other 2GP provisions are not subject to appeal and therefore can be afforded considerable weight.
- [99] 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 application is consistent with the relevant objectives and policies of the Regional Policy Statement for Otago, in particular Objective 5.3 and Policy 5.3.1.e.

Other Matters

- [100] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application.

- [101] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.
- [102] In this case I do not consider that the proposed activity represents a challenge to the integrity of the Operative Plan. Whilst the site is undersized in terms of the density provisions for the rural zone, it is only narrowly undersized in terms of the Operative Plans provisions, noting the density for the zone in terms of the 2GP is subject to appeal. As it is a relatively unique and confined proposal, I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.
- [103] From a density perspective, the proposed activity is 'close' to the density outcome sought by the Operative Plan, and if this application had been lodged prior to the 2GP it would have been a more straightforward proposition. The 2GP sets a lower density of development for the site as a permitted activity and a sterner set of policy provisions against which an application must be assessed. However, again, these are subject to appeal so I consider should be afforded less weight.
- [104] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any. I therefore do not consider that the Committee needs to be concerned about the potential for an undesirable precedent to be set in this regard.

CONCLUSION

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

RECOMMENDATION

Land Use LUC-2019-623

*That pursuant to Section 34A(1) and 104D and after having regard to Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and/or the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying activity** being the establishment of a residential activity on 6366 Hyde-Middlemarch Road, Middlemarch (Section 1 SO 23734), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

1. *That the proposal shall be undertaken in general accordance with the application and in particular the site plan and the relevant details and information submitted with resource consent application, LUC-2019-623 received by Council on 27 November 2019; except where modified by the following conditions:*

Transportation and Access

2. *The new access to service the residential unit must be installed prior to occupation of the residential unit. The access must:*
 - (a) *Be hard surfaced from the edge of the seal of Milford Street to the property boundary for a minimum of 5.0m;*
 - (b) *Be a minimum 3.5m and maximum 6.0m formed width; and*
 - (c) *Be adequately drained for its duration.*

Firefighting

3. *The residential unit must have access to sufficient water supplies for fire fighting consistent with the SNZ/PAS:4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice.*

Landscaping

4. *At the time of applying for building consent for the residential unit, the consent holder shall supply a plan to Council's Resource Consents Manager for certification. The plan must:*
 - (i) detail the landscaping proposed for the site;*
 - (ii) identify how the planting complements the design and appearance of the residential unit proposed on the site, and mitigates any adverse effects on rural amenity; and*
 - (iii) include a maintenance regime.*
5. *The planting shown on the landscaping plan certified under Condition 4 must be fully undertaken no later than first planting season following occupation of the residential unit. Completion of the planting activity must be confirmed by notifying Council at rcmonitoring@dcc.govt.nz within one month of completion of the planting.*

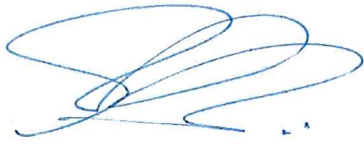
Transportation

1. The vehicle crossing, between the road carriageway and the property boundary, is within legal road and will therefore require a separate Vehicle Entrance Approval from DCC Transport to ensure that the vehicle crossing is constructed/upgraded in accordance with the Dunedin City Council Vehicle Entrance Specification (note: this approval is not included as part of the resource consent process).

General

2. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
3. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
4. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
5. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
6. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

Report prepared by:



Shane Roberts
Consultant Planner

9 November 2020
Date

Report checked by:



Campbell Thomson
Senior Planner

9 November 2020
Date