

Before a Panel appointed by Dunedin City Council

In the Matter of the Resource Management Act 1991

And

In the Matter of of an application by Lindsay Carruthers for land use consent for a
dwelling at 6366 Hyde-Middlemarch Road, Middlemarch

LUC-2019-623

Statement of Evidence of Emma Rayner Peters

Dated 17th November 2020

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Introduction

1. My name is Emma Rayner Peters. I hold a BA and LLB both from the University of Otago and a First Class Honours degree and MA with Distinction, both from the University of Canterbury. I have worked as a solicitor in the areas of commercial and environmental law. I have been the principal of Sweep Consultancy Limited since 2003 providing resource management advice predominantly in the Dunedin City, Clutha, Waitaki, Queenstown Lakes and Central Otago districts.
2. I have prepared this evidence based upon my investigations and knowledge of the site and the Dunedin City District Plan 2006 (**2006 plan**) and the Dunedin City Second Generation District Plan (**2GP**).
3. I acknowledge we are not before the Environment Court. However, I have read the Code of Conduct for Expert Witnesses within the Environment Court Consolidated Practice Note 2014 and I agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.
4. To avoid repetition, my evidence has been structured to address the key matters raised in the s42a report and the valid submission received.

Late Submission

5. The applicant objects to the Hearings Panel receiving the late submission on the basis that to do so is prejudicial to the applicant and is not respectful of a fair process.
6. Council provides clear limited notification documentation to affected parties. That documentation clearly states how to make a submission and closure date for submissions.
7. In this case the notice of limited notification was dated 7 September 2020 and stated that the submission period closed at midnight on 6 October 2020. The submission close date and time were in bold and on their own line.
8. The late submission was received in two parts and it appears there is differing information in each part. An email was received by Council on 14 October 2020 and a hard copy was received by Council on 16 October 2020 with both dates being well outside the valid submission period.

9. The three concerns that this late submission raises are: privacy, location of the dwelling and impact on their views.
10. With respect to privacy, the property owned by the late submitter has a hedge along its boundary, excepting the driveway, which affords privacy. Furthermore, there is approximately 26m between the closest edge of their house and the boundary of the applicant's record of title. Within that distance there is, of course, Milford Street, a formed public road.
11. With respect to location of the dwelling the applicant has committed to the location as detailed in the application subject to the comments made in the next section below.
12. With respect to impact on their views, the concept of permitted baseline is important. As a permitted activity, that is, no resource consent required, the applicant could:
 - (a) Erect a 10m high¹ large shed or hay barn² setback 20m from the boundary with Milford Street³ directly opposite the late submitter's house; and
 - (b) Plant a shelterbelt or woodlot along the length of their boundary with Milford Street. There are no setback requirements pursuant to either the 2006 plan or 2GP for a shelterbelt or woodlot along that boundary with respect to this site.

Location of Dwelling

13. The valid submission received from Mr Allen Frazer states that: *"My opposition can be addressed by confirming location as per the site plan in Appendix 2 of the impact assessment."*
14. The applicant has committed to the location as specified on the site plan. However, as noted in paragraph [7] of the s42a report, the distances specified on the site plan are 'TBC', that is, 'to be confirmed'. This is because although the location of the house site appears flat there are in fact shallow depressions which form part of the overland flow path in big rainfall events. The applicant is keen to avoid these areas.

1 2006 Plan Rule 6.5.3(2)(a) and 2GP Rule 16.6.5.1.c.i.

2 There is no limit in either district plan on the size of buildings in the rural zone meaning that size alone does not trigger a requirement for resource consent if all other performance standards are met.
No building consent required pursuant to Schedule 1 of the Building Act 2004 provided that the shed is a single storey pole shed or hay barn with a gross floor area not exceeding 110m² and the design has been carried out or reviewed by a Chartered Professional Engineer, or a Licensed Building Practitioner has carried out or supervised design and construction. 110m² gross floor area equates to a shed which is 27.5m long by 4m deep or 36.5m long by 3m deep.
(source: <https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-work-that-doesnt-need-a-building-consent/new-building-consent-exemptions/>).

3 2006 Plan Rule 6.5.3(i)(a)(i) and 2GP Rule 16.6.10.1.a.1.

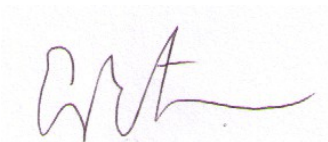
15. Mr Frazer requests of Council: *"...a condition on the resource consent that the dwelling and associated buildings be sited no further west than the location specified in Appendix 2 of the application's assessment of environmental effects report."*
16. The s42a report includes a condition of consent which states: *"That the proposal shall be undertaken in general accordance with the application and in particular with the site plan..."*⁴. This condition is the standard condition used by Council with respect to satisfying requests such as Mr Frazer's.
17. The applicant anticipates that there is sufficient flexibility in the words 'general accordance' and the 'TBC' noted in relation to distances specified on the site plan to provide a location for the house which avoids the lower parts of the site as discussed in paragraph 14 above. If that is not proven to be the case, the applicant will be required to apply for a variation of consent.

s42a Report

18. I concur with the consultant planner's s42a recommendation to grant consent to the application and the reasoning provided for that recommendation.

Draft Conditions

19. The applicant agrees to the conditions of consent as detailed in the s42a report.

A handwritten signature in purple ink, appearing to read 'Emma Peters', is shown on a light blue background.

Emma Peters (BA (First Class Honours), MA (Distinction), LLB)

⁴ See condition of consent 1, page 19 of the s42a report.