

BEFORE THE DUNEDIN CITY COUNCIL

LUC-2016-339

**IN THE MATTER of the Resource management Act
1991**

AND

**IN THE MATTER A resource consent by SD & LM
Greer for residential activity at 480
Riccarton Road West.**

PLANNING EVIDENCE – CONRAD ANDERSON

(on behalf of the submitter, [REDACTED])

DATE: 28 NOVEMBER 2016

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1 Introduction

- 1.1 My name is Conrad Anderson. I am a Director of Anderson and Co Resource Management and since mid 2012 I have been a resource management planner with Anderson and Co Resource Management.
- 1.2 I have completed the required academic papers for the Masters of Planning at the University of Otago, and I am anticipating completing my thesis in 2017.
- 1.3 I am an associate member of the New Zealand Planning Institute.
- 1.4 I confirm that I have read and agree to comply with, the Code of Conduct for Expert Witnesses, as set out in the Environment Court's Consolidated Practice Note. I can confirm that this evidence is within my area of expertise.
- 1.5 I have read the application, the submitters submission and the processing planners report.
- 1.6 I have visited the the submitters site, from which I have viewed the subject site.
- 1.7 I will address the following matters:
 - Activity Status
 - Notification
 - Background to the submission
 - Work completed post 2008 building consent
 - Hazards / Otago Regional Council
 - Permitted Baseline
 - Assessment of Effects
 - Objectives and Policies
 - Conclusion

2 Activity Status

- 2.1 Consent is required as Rule 6.6.2(i)(b)(i) requires a side and rear yard of 10m. The application being a restricted discretionary activity.
- 2.2 With regards to the 2GP, Rule 17.6.10.1 controls boundary setbacks in the rural residential zone, and requires a minimum setback of 10m for residential activity. There is only one submission that is relevant to Rule 17.6.10.1 which seeks to increase the set back to 20m. The S42A report recommends rejecting that submission. Under the 2GP the side yard breach continues to be a restricted discretionary activity.
- 2.3 The proposed continuation of the 10m setback rule in the 2GP and the lack of submissions seeking to reduce the setback distance provides an indication of the on-going importance of the existing setback within the zone.

3 Notification

- 3.1 The 2GP identifies overlays associated with a swale (Swale Mapped Area 14a) and drainage designation. These are discussed in more detail later, however, it is noted that the 2GP Rule 8.4 states:

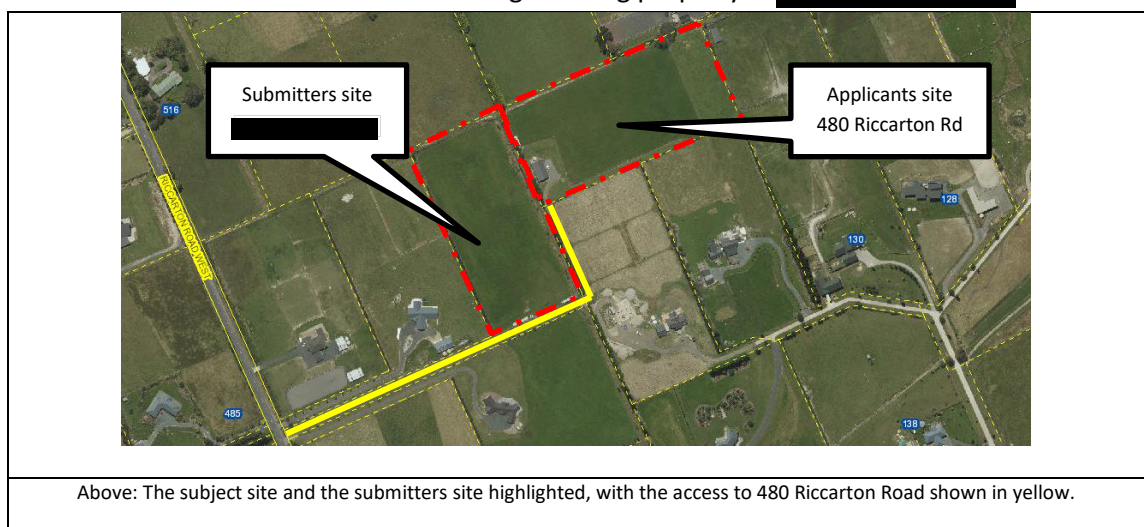
“Otago Regional Council will be considered an affected person in accordance with section 95B of the RMA where their written approval is not provided with respect to application for resource consent in the following locations:

- 1. Hazard 1 (flood) Overlay Zones; and*
- 2. Swale mapped areas”*

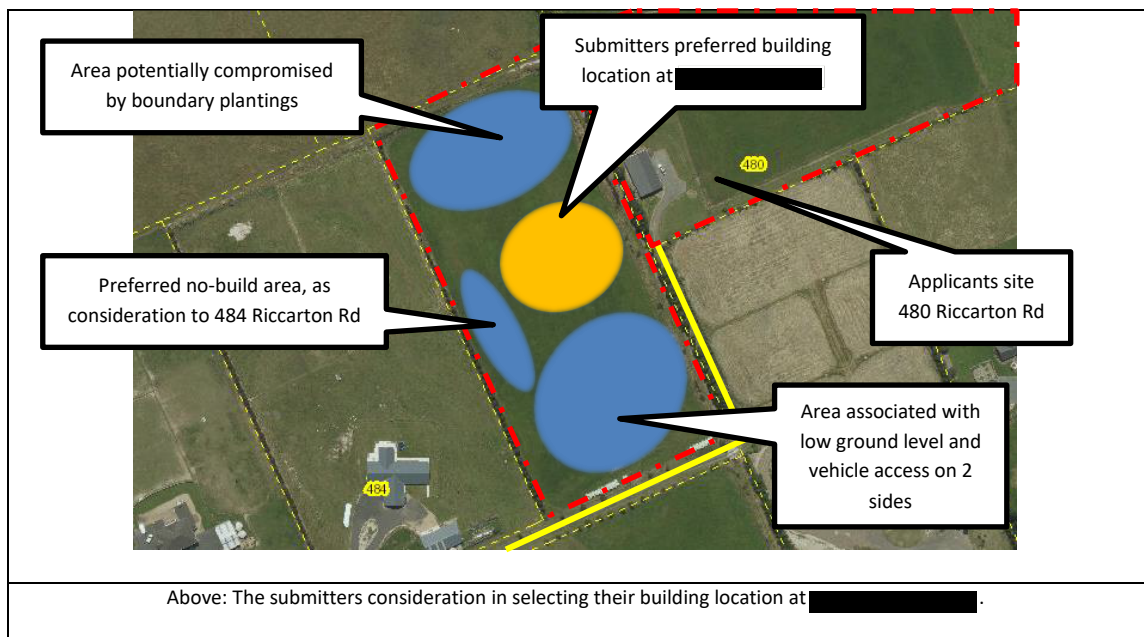
- 3.2 I understand that rules that have no submissions in opposition become operative once the time for making submissions has expired (Section 86F Resource Management Act 1991). Resulting in a requirement for notification of the application to the Otago Regional Council.

4 Background to the Submission

- 4.1 The submitters are the owners of the neighbouring property at [REDACTED]



- 4.2 The submitters entered into a sale and purchase agreement to purchase their site in late 2015, with the goal of building on the land. Their desire is to take advantage of the amenity values associated with the rural residential zone, including open space, privacy and access to sun.
- 4.3 When the submitters purchased their property, they were aware of the access way to 480 Riccarton Road on their south-east boundary and partially on their north-east boundary (as shown above in yellow). In addition, the submitters were aware of the finer details of the land and surrounding area. The map below identifies the relevant locations, which are explained in the following bullet points:



- The area of the submitters site closest to the south-east boundary is the lowest part of the site. In addition, the submitters felt this area had reduced amenity due to the access way to 480 Riccarton Road.
 - The northern part of the submitters site could be compromised in the future by trees being planted in the neighbouring property (165 Tirohanga Road).
 - Due to a combination of the above, the submitters found the area centrally located on their site as the most practical and desirable location for a dwelling.
 - However, in consideration to the neighbours at 484 Riccarton Road, the submitters reduced the preferred dwelling location to one that was centrally located on the site but the furthest practical distance away from the south-west boundary. Thus ensuring the amenity values of 484 Riccarton Road were not compromised.
 - The result is that the submitters are restricted to a dwelling site that is centrally located, but closer to the north-east boundary.
- 4.4 Prior to purchasing the site, the submitters were aware of both the shed that is the subject to todays hearing, and ultimately the location of the shed in terms of the preferred location for a dwelling. However, as the shed could not, as of right, be used for residential activity,

the submitters had a level of comfort with the existence of the shed and its use for non-residential purposes.

- 4.5 At the time the submitters entered into the sale and purchase agreement, the shed at 480 Riccarton had only a door and one window on the boundary wall facing [REDACTED].
- 4.6 Based on the submitters enquiries with Council and the development of the wider area (which has resulted in larger dwellings generally positioned away from the boundaries), the submitters took comfort that the shed had limited permitted uses.



Above: Indicating how the surrounding area has been developed, with residential activity mostly set off the boundaries. The subject property highlighted.

- 4.7 In addition to giving consideration to the site and the surrounding area, the submitters have gone to great lengths to secure the ability to build the type of dwelling they desire. As noted earlier the amenity values valued by the submitters include open space, privacy and access to sun. In fact the submitters sought direction, via Environment Court mediation, to allow their consented development to include “re-angling of the eastern wing for improved sun”.
- 4.8 The above background has relevance in terms of defining and verifying what Amenity Values are important to the submitters, and what matters were considered prior to their purchase of [REDACTED].
- 4.9 To assist with validating the submitters need for the identified Amenity Values, it is anticipated that the submitters health professional will provide a confirmation letter, which if possible, will be provided confidentially to the decision maker. Please note, the confidential nature of the letter will be due to the letter commenting on health issues which are personal to the submitter.

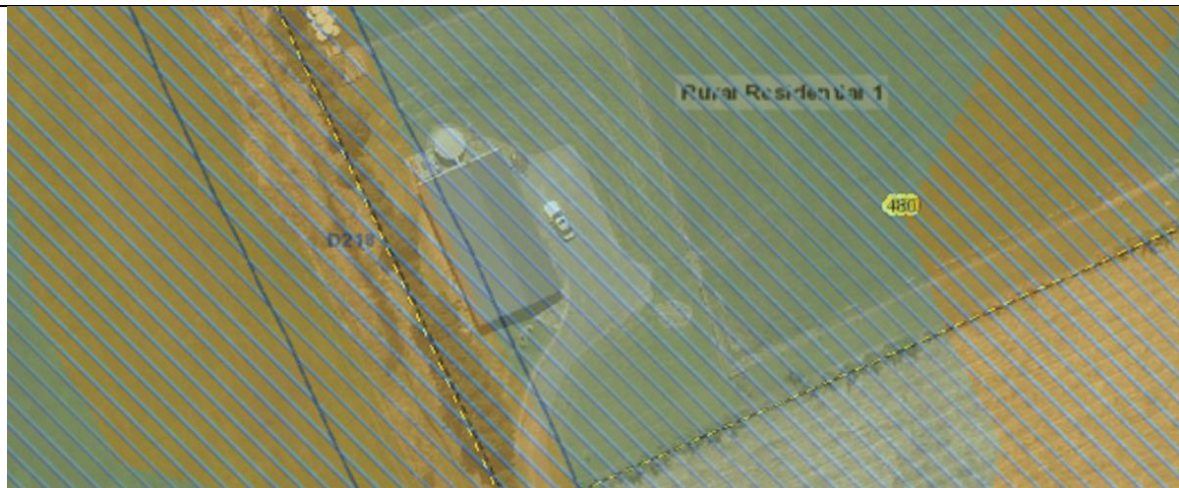
5 Work completed post 2008 building consent

- 5.1 The 2008 building consent for the shed indicates a simple shed, half of which is an open garage (refer plans within the application).

- 5.2 Following the initial construction of the shed, subsequent work has been undertaken. Since the submitters entered into a sale and purchase agreement, the shed had been further modified to now includes 3 windows and 1 glass door facing the submitters property.
- 5.3 The Council planners report does not mention if a site visit was undertaken, and if so, the report does not summaries the alterations undertaken since the 2008 building consent was issued, or if the site is currently used for residential activity.
- 5.4 The submitters understand the applicant is currently living in the shed, and while this may raise a compliance matter for Council, it also provides the submitters the ability to clearly understand what the effects of the application will be, as those effects currently exist, albeit in an unconsented manner.
- 5.5 The decision by the applicant to purchase land that had no permitted dwelling, to undertake renovations to “residentialise” a shed, and to live in an unconsented dwelling is the applicants choice. Those actions and the possibility of financial losses associated with unauthorised building work, are matters that should carry no weight in the decision making process.

6 Hazards / Otago Regional Council

- 6.1 The location of the shed in terms of the 2GP overlays (swale and drain designation) have not been clearly identified. The map below aligns the DCC aerial photo with the 2GP maps. The result indicates that the shed is within both the swale mapped area (area 14A) and the drainage designation (D218):



Above: The overlay includes the the Hazard 3 – Flood (Area 14C) (stripes), Swale Mapper Area (area 14A) (brown) and Designation D218 – East Taieri Drainage Scheme (between blue lines)

- 6.2 Given the above, granting consent may potentially result in increased risk associated with people living and sleeping in a property that is within a swale area.

- 6.3 In terms of flood hazards, mitigation such as minimum floor height is often suggested. The application provides no details on ground level vs floor level, and offers on mitigation associated with minimum floor height.
- 6.4 The proximity to the boundary is directly related to the risk associated with the swale. Therefore, the above matters (hazard, mitigation) are appropriate to be included as part of the consideration.
- 6.5 As noted earlier, both the swale and the designation are of interest to the Otago Regional Council, hence notification to the Otago Regional Council may have been appropriate.

7 Permitted Baseline

- 7.1 The baseline includes activities that can be undertaken as of right and the existing authorised environment. In this situation, the shed already legally exists.
- 7.2 The concept of someone demolishing the shed, just so they could build a dwelling in a similar position (while allowing for a 10m setback) has limited, if any basis. There are numerous building locations on the site, many of which have a slightly higher elevation (refer DCC contour map).
- 7.3 In fact, the applicant has confirmed that is what they are anticipating if the application before us today is declined (refer email to submitter, dated 26 June 2016, included in the submitters submission).
- 7.4 Taking the above into account results in a permitted baseline being that the shed remains a shed, and a residential dwelling is built elsewhere on the site, while adhering to the 10m yard rule. Thus, resulting in the shed becoming a buffer between future residential activity on both 480 and [REDACTED] Riccarton Road.
- 7.5 In terms of activities and the associated effects within the shed, the following is noted:
- Under the Rural Residential zoning, Farming Activity is permitted, which is associated with the “production of vegetative matter or commercial livestock”. Activities such as commercial firewood or mechanics facilities are not included in the permitted activities. The 2GP has similar limitations.
- 7.6 Hence, it is concluded that in terms of the permitted baseline the shed forms a buffer between future residential activity on the site and the submitters land.

8 Assessment of Effects

- 8.1 The domestication of the shed will bring residential activity closer to the building area of the submitter than what is likely under the baseline.

- 8.2 The shed currently has 1 glass door and 3 windows facing the submitters property, with the areas inside the shed closest to the boundary being the kitchen and part of the living/dining area.
- 8.3 The effects associated with the shed being used for residential activity include: movement of people and vehicles close to the boundary, domestic lighting, and importantly the loss of privacy and the resulting restrictions on the submitters ability to enjoy their space. As noted earlier in this evidence, these are key Amenity Values to the submitter.
- 8.4 The existing trees between the shed and the submitters property are deciduous and provide no mitigation during winter.



Above: Photo taken from the submitters land of the shed, highlighting the deciduous trees and the windows/doors facing the boundary.

- 8.5 The presence of the drain and the associated restrictions on plantings and fencing, result in limited ability to mitigate the effects. The proposed conditions of consent are neither sufficient in terms of bush species and maturity (i.e. height) nor do the conditions deal with the situation if removal of the bush and existing trees is required by the Otago Regional Council.
- 8.6 The photo below shows scouring of the drain as a result of flooding. The scouring has left tree roots exposed, which may ultimately result in the tree falling over or requiring removal.



Above: Scouring of the drain, resulting in tree roots left exposed (red circle). Photo taken from submitters property, looking towards the applicants property.

- 8.7 The applicant has already undertaken some additional planting, but this has been completed with very young/small plants, which are likely to take a number of years to provide any useful screening, if at all.



Above: Additional planting already undertaken with very young/small plants (red circle). Photo taken from submitters property, looking towards the applicants property.

- 8.8 The submitters have had their anticipated house pegged, which is helpful in terms of determining the relationship between the consented dwelling at [REDACTED] and the shed at 480 Riccarton Road.

9 Objectives and Policies

- 9.1 Objective 6.2.2 seeks to maintain and enhance the amenity values associated with the character of the rural area. The definition associated with the Objective assists to explain that the rural character of an area vary from one locality to another, and that character is valued by those people who live and work in rural areas and by those who visit.

- 9.2 The Resource Management Act defines Amenity Values as:
- “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”
- 9.3 As noted above, the area is characterised by larger dwelling predominately located away from the boundaries. The aerial photo earlier in this evidence highlights this.
- 9.4 As noted above, the submitters have identified what characteristics they value the most: open space, privacy and access to sun.
- 9.5 Objective 6.2.2 seeks to either maintains or enhance amenity values – the proposal is assessed as neither enhancing nor maintaining the amenity values to the owners and future residents of [REDACTED].
- 9.6 The application is assessed as being contrary to Objective 6.2.2.
- 9.7 In terms of objectives and policies relating to hazards, the following is noted:
- Objective 17.2.1: Seeks to ensure the effects of hazards are avoided, remedied or mitigated. The explanation for Objective 17.2.1 includes the following:
“The Council also ensures that any proposed subdivision, land use activity or development will not cause to be affected by hazards”. Granting consent will result in residential activity within a swale, while suggested conditions of consent associated with planting may increase the effects of hazards.
 - Policy 17.3.3: Seeks control development in areas prone to the effects of flooding. Refer above re swale and planting, in addition no information has been provided re floor/ground heights. Consideration of a dwelling location on higher land within the site may be appropriate.
- 9.8 In terms of the 2GP, there a number of sections that are relevant in regards to risk:
- Section 11.1.2 (Guidance in risk) notes: The key priority in managing the risks from natural hazards is the protection of people including loss of life, injury, the risk of being cut off from Civil Defence assistance...After this the focus is on risk to property, such as loss of, or damage to, buildings.
 - Objective 11.2.1: Seeks to minimise risk from natural hazards in the short to long term. Notwithstanding the site is identified as being low risk, mitigation has not been provided.
 - Policy 11.2.1.8: Seeks a minimum floor level in the Hazard 3 overlay zones for new buildings intended for sensitive activities. While the application is not related to a new building, the underlying concern of managing risk could be applied.

- 9.9 Overall, there are few objectives and policies of relevance, and the application is assessed as being contrary to those associated with amenity and hazards.

10 Conclusion

- 10.1 Without further information associated with the swale, risk mitigation, planting details it is difficult to fully and accurately assess the application.
- 10.2 Mitigation is hampered by the presence of the drain, both in terms of planting location and plant selection. Further, planting mitigation could be removed at the order of the Otago Regional Council due to the designation associated with the drain.
- 10.3 The ongoing monitoring and responsible associated with any planting requirements imposed by conditions of consent, will need to be comprehensive, and potentially will be cumbersome.
- 10.4 Notification to the Otago Regional Council was anticipated by the 2GP process.
- 10.5 Notwithstanding the above, the application, if granted will compromise the key amenity values of the submitter.
- 10.6 The character and amenity of the immediate area has been established due to the development of a number of surrounding properties. It is that setting which aligns with the amenity values of the submitter and ultimately resulted in the submitter purchasing the property at [REDACTED].
- 10.7 The conversion of a shed close the boundary, within a swale, and without the opportunity for sufficient mitigation planting, is assessed as resulting in effects that are more than minor to the submitter, while also being contrary to the identified objectives and policies associated with amenity and hazards.

Conrad Anderson
28 November 2016