

13 September 2016

John and Dianne Sebelin
C/- Kurt Bowen
Paterson Pitts Group
PO Box 5933
Dunedin 9058

Dear John and Dianne Sebelin

RESOURCE CONSENT APPLICATION

**SUB-2016-34
10 RICCARTON ROAD WEST
MOSGIEL**

The above application for undertake a two lot subdivision at 10 Riccarton Road West was processed on a notified basis in accordance with Section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprising Councillors Andrew Noone (Chairperson), Lee Vandervis and Andrew Whiley, heard and considered the application at a hearing on 24 August 2016.

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. Following the conclusion of the hearing, a site visit was undertaken by the Hearings Committee.

The Committee has **granted** consent to the application on 31 August 2016. The full text of this decision commences below with a consent certificate attached to this letter.

THE HEARING AND APPEARANCES

The applicant was represented by:

- John and Dianne Sebelin (The applicants)
- Kurt Bowen (Registered Surveyor)

Council staff attending were:

- Kirstyn Lindsay (Advisor to Committee),
- Shane Roberts (Consultant Processing Planner), and
- Wendy Collard (Governance Support Officer).

Submitters in attendance included:

- Brian Miller

PROCEDURAL ISSUES

No procedural issues were raised.

PRINCIPAL ISSUES OF CONTENTION

The principal issues of contention are as follows:

- Density of the proposed subdivision and rural amenity
- Precedent
- Access to the lots
- Establishment of structures on high class soils
- Natural hazard risk
- Provision for fire fighting

SUMMARY OF EVIDENCE

Introduction from Processing Planner

Mr Roberts, Council's Consulting planner, gave an overview of his recommending report. He noted that resource consent is sought to subdivide two existing certificates of title into two new lots. Proposed Lot 1 will comprise 19.6ha and would front Riccarton Road West, while proposed Lot 2 comprising 19.4ha would be a rear site utilising a leg-in from Riccarton Road West. The Owhiro Stream runs through the site, along with a series of drainage runners and an ORC scheduled drain. Mr Roberts noted that the current use of the site is vacant farmland but that a land use consent was granted on 22 January 2016 for a second residential dwelling on the property of 10 Riccarton Road and, therefore, two residential units are currently authorised for the 10 Riccarton Road property. He noted that LUC-2015-577 was assessed as controlled activity and, as such, the Council was obliged to grant the consent but could impose conditions. Conditions imposed on the land use consent defined the location of the two proposed houses by two 40m by 40m building platforms, the minimum floor level for the dwellings and an upgrade to the access to the site.

Mr Roberts acknowledged that under the Operative Dunedin City District Plan, the site is zoned Rural and the proposal complies with the 15ha lot size requirement and is therefore a restricted discretionary activity. Under the Proposed Dunedin City District Plan, the site would be zoned Rural – Taieri Plains. Under the proposed plan, both proposed lots are less than the 40ha requirement for this zone and the activity is assessed as a non-complying activity.

Mr Roberts reminded the Committee that the Dunedin City Council sought a declaration from the Environment Court to make the rules relating to the minimum site size for rural zones to have immediate legal effect therefore the proposal is also caught by those provisions. However he noted that little weight can be afforded to the provisions of the Proposed District Plan because submissions have been received in opposition to those rules and no decisions had yet been released. Mr Roberts noted that the application was publically notified and four submissions were received; two opposed and two neutral.

Mr Roberts concluded that the principal effects for the subdivision were less than minor, particularly when he has regard to the land use consent that existed for two dwellings on the site. He also considered that, in terms of the objectives and policies of the relevant district plans, the proposal is consistent with the objectives and policies of the Operative District Plan, but contrary to those of the proposed district plan which he noted was a reflection in the change of density outcomes sought. As the proposal passed one of the section 104D gateway tests, he advised that the Committee were able to consider granting the consent. Overall, Mr Roberts recommended that the Committee grant consent.

The Applicant's Case

Mr Bowen, for the applicant, spoke to the application and noted that essentially the proposed subdivision was a boundary alignment between two existing titles and would not result in additional lots or any greater residential development than that which was already approved for the property through LUC-2015-577. He agreed with the processing planner's assessment of the relevant rules of both the operative and proposed District Plans.

Mr Bowen acknowledged the concerns raised by the submitters. He noted in respect to the Otago Regional Council's (ORC) submission that building platforms and minimum floor levels had been identified at the time that the land use consent (LUC-2015-577) was approved. These platforms were positioned on higher areas of the site and the elevated floor levels were intended to reduce the flood risk to the dwellings. Mr Bowen noted that the proposed subdivision would not interfere with the operation or function of the ORC scheduled drain; noting specifically that the residential activity approved by the land use consent was to be located some distance from the drain. When questioned by the Committee, Mr Bowen considered that the boundary could be configured so that the drain was contained entirely within one lot. He disagreed with ORC that the granting of this proposal would set a precedent and believed that once the proposed plan became operative any precedent would be extinguished. Notwithstanding, his view on precedent, Mr Bowen noted that the existing land use consent and underlying title configuration set this application apart from others.

Mr Bowen noted the neutral submission by the New Zealand Fire Service which requested that if the Committee were of a mind to grant consent, that conditions relating to adequate firefighting water supply and suitable access to the site be imposed upon the consent. Mr Bowen noted that the applicant accepted these conditions.

Mr Bowen acknowledged the neutral submission of Mr Charles Bradfield and Ms Katherine Brooks and the opposing submission of Mr Brian Miller which raised issues of the widening of Riccarton Road West, the impact on rural amenity and high class soils and the use of the right-of-way (ROW) access off Riccarton Road West by an adjacent nursery. Mr Bowen considered that the issue of road widening fell outside of the scope of the consent but noted that a building line restriction along the Riccarton Road West frontage of the subject site would be carried down onto new Lot 1. With regard to the access to the site, Mr Bowen noted that the use of the access, by the nursery located at 70 Riccarton Road, was a right imposed on the certificate of title and that the applicants had no control over this use. He noted that the applicants could lawfully use this driveway to access the two units which were authorised by LUC-2015-577. With respect to the impacts on rural amenity and high class soils, Mr Bowen reminded the Committee that land use consent had already been issued for the site and suitable building platforms had already been authorised. He acknowledged that reducing the flooding risk to the dwellings had been the primary concern in the positioning of the building platforms rather than the protection of high class soils. However he also noted that the 40m by 40m building platforms were a small percentage of the high class soils on the site overall.

Mr Sebelin then spoke to the application. He noted that the immediate legal effect of the rural subdivision rules in the propose plan had taken them by surprise. They had always intended to subdivide the site as they headed into retirement and were dismayed when they realised that the development potential of the site had been reduced by the proposed plan. He noted that the pastoral use of the site would continue. Mr Sebelin requested that the Committee consider granting the consent.

Evidence of Submitters

Mr Miller spoke to his submission which focused on three main points:

- (1) The widening of Riccarton Road West.
- (2) The use of the access by the nursery located at 70 Riccarton Road West.
- (3) The location of the building platforms over high class soils.

With respect to point (1) Mr Miller felt that it was unfair that a portion of his property had been identified for road widening and that he felt the applicant could more easily supply any land required for the proposed road widening and that this should be considered as part of this application.

In respect of point (2) Mr Miller sought clarification as to how the ROW used by 70 Riccarton Road had come to be established and what rights this conveyed. (A deed, later produced by the applicant during the hearing, showed the ROW had been lawfully established in 1899). Mr Miller queried the lawfulness of the use of the driveway by the nursery and maintained that the use of the driveway for residential access could conflict with the existing nursery use and result in further safety issues. The Committee advised Mr Miller that they would investigate the lawfulness of the use of the driveway by the nursery prior to making their decision.

With regard to point (3) Mr Miller believed that it was not an efficient use of the land to establish building platforms over high class soils.

Processing Planner's Review of Recommendation

Mr Roberts acknowledge the presentation by the applicant and the concerns raised by the submitter. He reminded the Committee that they may only consider the effects on the environment which would arise from the granting subdivision. To support the Committee in this assessment, Mr Roberts outlined what could occur on the site as of right and noted that the right to establish two residential units on the site had already been confirmed. He further reminded the Committee that little weight could be given to the proposed district plan at this time. It was his opinion that the granting of the subdivision would not create an undesirable precedent and he reiterated his opinion that consent to subdivide the site should be granted.

Applicants Right of Reply

Mr Bowen confirmed that the applicant was happy to accept the conditions proposed by Mr Roberts in his recommending report. He requested that the Committee consider the application and find that consent to subdivide should be granted.

STATUTORY AND OTHER PROVISIONS

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the following chapters of the Operative Dunedin City District Plan: 4 Sustainability, 6 Rural Zones, 17 Hazards Section and 20 Transportation and the following chapters of the proposed Dunedin City District Plan: 16 Rural Zones and 11 natural Hazards. Statutory provisions considered included Sections 5, 7(c) and 7(f) within Part 2 of the Act. Regard was also given to the Regional Policy Statement for Otago and proposed Regional Policy Statement for Otago.

MAIN FINDINGS ON PRINCIPAL ISSUES OF CONTENTION

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

DECISION

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Committee reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken during the public-excluded portion of the hearing, the Committee inspected the site and this added physical reality to the Committee's considerations.

*That, pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being a two lot subdivision at 10 Riccarton Road, East Taieri, legally described as Lot 1 DP 10269 (Computer Freehold Register OTB1/697) and Part Section 5-6 Block III East Taieri Survey District (Computer Freehold Register OTB1/698 Ltd), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

REASONS FOR THIS DECISION

- 1 The Committee considered that the proposed activity is consistent with the relevant objectives and policies of the District Plan but contrary to the objectives and policies of the Proposed District Plan and fails one of the gateway tests in section 104D of Act.

- 2 The Committee believe that the proposal will not give rise to more than minor adverse environmental effects and therefore satisfies the other gateway test contained in Section 104D of the Resource Management Act 1991. As such, the Committee were, therefore, able to consider the granting of consent to the proposal.
- 3 The Committee found that the subdivision was consistent with the objectives and policies of the Regional Policy Statement for Otago and proposed Regional Policy Statement for Otago.
- 4 The Committee considered that it was appropriate to apply the permitted baseline in this instance. In making its assessment, the committee acknowledged that the right to establish two residential units on the site had already been confirmed by LUC-2016-577. Furthermore, the site already comprised two computer freehold registers and as such the felt its consideration of environmental effects was limited to those arising from the rearrangement of cadastral boundaries of the two subject computer freehold registers.
- 5 In addition, the Committee noted that in applying the baseline, the issue of high class soils raised by Mr Bradfield, Ms Brookes and Mr Miller in their submissions, including the issue raised at the hearing by the submitter Mr Miller that the proposal was contrary to policy 5.5.2 of the regional policy statement, was unable to be considered as the location of the building platforms on the high class soils has been established by LUC-2015-577. The Committee note that the vast majority of the site will continue to be used for a predominantly pastoral use.
- 6 The Committee notes that LUC-2015-577 authorises a "*second residential dwelling on the property of 10 Riccarton Road West, Mosgiel, being held in CFRs OTB1/698 and OTB1/697*". It is the Committee's opinion that once the subdivision is given effect to the property at 10 Riccarton Road West, Mosgiel held in CFRs OTB1/698 and OTB1/697 will no longer exist and it will not be possible to establish a second residential unit as authorised by LUC-2015-577. The Committee notes that if the consent holder gives effect to the subdivision but does not establish residential activity on both lots 1 and 2 before the proposed district plan is made operative, then residential activity on the new lots will be subject to the new district plan. The Committee strongly recommends that if there will be any delay in building the new lots, the consent holder apply for a certificate of compliance to secure their right to build under the operative district plan.
- 7 With regard to the submission from Otago Regional Council regarding natural hazards, the Committee find comfort with the location of the building platforms and minimum floor levels required by LUC-2015-577 and consider that these provide for suitable locations to establish residential activity on the site. However as discussed above, the Committee are mindful that once the subdivision has been given effect to, LUC-2015-577 will no longer be required to establish residential activity on the site as residential activity at this density is a permitted activity under the operative district plan. In order to ensure that residential activities are contained within the building platforms and that minimum floor levels are met, even if LUC-2015-577 is not given effect to, the building platforms and minimum floor levels identified in LUC-2015-577 shall be included as a consent notices to be registered on the titles of both new lots.
- 8 With respect to the ORC scheduled drain, the Committee noted that the applicant offered to configure the internal boundary of the subdivision so that the drain was contained entirely within one lot. The Committee consider that this will enable more coherent management of the drain and require this to be a condition of consent.
- 9 In respect to the firefighting provisions requested by the New Zealand Fire Service in their submission, the committee acknowledge the acceptance of the conditions recommended by the consultant planner in his recommending report. Having reviewed these conditions the committee believe that these conditions are appropriate and should be imposed on the consent.

- 10 With regard to access to the site, the Committee note the permitted baseline and that the two residential units may currently access the site over the shared ROW. Upon request of Mr Miller, the Committee sought information regarding the legality of the use of the ROW by the activities occurring on 70 Riccarton Road. The Committee are satisfied that the use of the ROW for the wholesale nursery activities at 70 Riccarton Road is lawful and that the consent in 2007 sought to separate the retail activity traffic from the wholesale activity traffic. All subsequent consents for 70 Riccarton Road and 58 Ayr Street provided for access to the sites from Bush Road. The Committee recognises that Mr Miller notes this in his evidence stating that the *"2007 resource consent provided for all new nursery activities to access the site from an access on Bush Road."* (My emphasis).
- 11 The Committee recognise that the access into the ROW is narrow and would benefit from being widened. However, they consider that requiring the access to be widened as part of this subdivision would be unreasonable, especially when applying the permitted baseline. It notes that only Lot 2 will gain access over this ROW and, as such, any traffic effect arising from the use of the access by one lot would be less than minor. Trimming the vegetation which flanks the access-way may improve the visibility and enhance ease of movement. The Committee have recommended these improvements as an advice note.
- 12 The Committee further noted that, while the proposed district plan could be afforded little weight at this time, the proposal was a non-complying activity under the proposed plan and the rural subdivision rules did have legal effect. The Committee considered that the property was already held in two titles and two residential units were authorised for the site, and that this set the site apart from other properties. As such, the Committee considered that the granting of consent will not threaten the integrity of the District Plan or establish an undesirable precedent for future applications.
- 13 Overall the Committee concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

COMMENCEMENT OF CONSENT

As stated in Section 116 of the Resource Management Act 1991, this consent shall only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

RIGHT OF APPEAL

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

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH 8140

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

- The Dunedin City Council.
- The 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 Kirstyn Lindsay, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

Yours faithfully

A handwritten signature in black ink that reads "Andrew Noone". The signature is written in a cursive, slightly slanted style.

Cr Andrew Noone
Chairman
Hearings Committee

Consent Type:

Subdivision Consent

Consent Number:

SUB-2016-34

That pursuant to Section 34A(1) and 104B and after having regard to Part 2 matters and Sections 104 and 104D of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **non-complying** activity being a two lot subdivision at 10 Riccarton Road, East Taieri, legally described as Lot 1 DP 10269 (Computer Freehold Register FR OTB1/697) and Part Section 5-6 Block III East Taieri Survey District (Computer Freehold Register OTB1/698 Ltd), subject to conditions imposed under Section 108 of the Act, as shown below:

Location of Activity: 10 Riccarton Road, East Taieri

Legal Description: Lot 1 DP 10269 (Computer Freehold Register FR OTB1/697) and Part Section 5-6 Block III East Taieri Survey District (Computer Freehold Register OTB1/698 Ltd)

Lapse Date: 13 September 2021

Conditions

1. *That the proposal shall be undertaken in general accordance with the application and in particular the scheme plan prepared by Paterson Pitts Partners Limited (attached as Appendix 1) and the relevant details and information submitted with resource consent application, SUB-2016-34 received by Council on 10 May 2016; except where modified by the following conditions:*
2. *Prior to certification of the cadastral dataset pursuant to section 223 of the Resource Management Act 1991, the subdivider shall ensure the following:*
 - a) *If a requirement for any easements for services, including private drainage, is incurred during the survey then those easements shall be granted or reserved and included in a Memorandum of Easements on the cadastral dataset.*
 - b) *The Proposed ROW Easements "A" and "C" over Lot 2 in favour of Lot 1 as shown on the scheme plan shall be duly reserved and granted and shown in a Memorandum of Easements on the cadastral dataset.*
 - c) *The internal boundary between new lots 1 and 2 shall be configured such that the Otago Regional Council Scheduled Drain is wholly contained within one Lot and shown on the cadastral dataset.*
3. *Prior to certification pursuant to section 224(c) of the Resource Management Act, the subdivider shall complete the following:*
 - a) *That the access over the Rights of Way A and C shall be duly formed with a suitable all-weather surface, to a minimum width of 5.0m, for their entire length, except that the access shall be hard surfaced from the edge of Riccarton Road West to a distance at least 5.0m inside the property boundary. The entire length of the rights of way shall be adequately drained.*

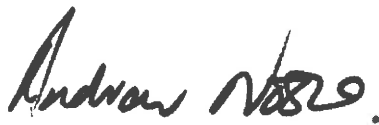
- b) *That a plan shall be prepared for Lots 1 and 2 showing the positions of the building platforms as approved by LUC-2015-577 and shown on the application plan for SUB-2016-34. The platforms shall be clearly dimensioned and the distances to the two closest boundaries shown. The plan shall be attached to the consent notice of conditions 3(d) and 3(e) below.*
- c) *That a consent notice shall be prepared for registration on the CFRS of new Lots 1 and 2 for the following on-going conditions:*
 - i) *The minimum formed width of vehicular access to the dwelling shall not be less than four metres wide and have a vertical clearance of no less than four metres high to ensure New Zealand Fire Service appliances have sufficient vehicular access to the property.*
 - ii) *The proposed dwelling must be provided with an adequate firefighting water supply in accordance with SNZ PAS 4509:2008 in order to reduce the fire risk.*
 - iii) *Underground tanks or tanks that are partially buried (provided the top of the tank is no more than 1 metre above ground) may be accessed for firefighting purposes by an opening in the top of the tank whereby couplings are not required. A hardstand area adjacent to the tank is required in order to allow a fire service appliance to park on it and access to the hardstand area must be provided as above.*
 - iv) *Any vehicle access or hardstand located on the site shall not divert overland stormwater flows onto adjacent properties.*
- d) *That a consent notice shall be prepared for registration on the CFR of new Lot 1 for the following on-going condition:*
 - i) *Residential development, including any residential accessory buildings, shall be fully contained within the building platform shown on the plan attached to this notice. The building platform identifies the most elevated area and suitable building location within the Lot. Farm buildings can be built in any location provided all bulk and location planning provisions applying at the time are met.*
 - ii) *That a dwelling built on the building platform shall have a minimum floor level of 14.2m amsl.*
- e) *That a consent notice shall be prepared for registration on the CFR of new Lot 2 for the following on-going condition:*
 - i) *Residential development, including any residential accessory buildings, shall be fully contained within the building platform shown on the plan attached to this notice. The building platform identifies the most elevated area and suitable building location within the Lot. Farm buildings can be built in any location provided all bulk and location planning provisions applying at the time are met.*
 - ii) *That a dwelling built on the eastern building platform shall have a minimum floor level of 15.5m amsl.*

Advice Notes

- 1 Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the work.

- 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. This consent attaches to the land to which it relates, and consequently the ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
- 4 It is the consent holder's responsibility to comply with any conditions imposed on their resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.
- 5 This consent shall lapse after a period of five years from the date of granting of this consent. This period may be extended on application to the Council pursuant to Section 125 of the Resource Management Act 1991.
- 6 Any vehicle access from the carriageway to the property boundary will be over road reserve and is to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Council's Transportation Operations Department).
- 7 Trimming the vegetation which flanks the access-way may improve the visibility and enhance ease of movement as vehicles enter, exit and traverse the right of way.
- 8 Should any stormwater discharge from the site not connect to the Council's reticulated network, it is advised that the Otago Regional Council be consulted before works commence, to determine if the discharge of stormwater will enter any waterway and what level of treatment and/or discharge permit, if any, may be required.
- 9 If there will be any delay in building the new lots, the consent holder is advised to apply for a certificate of compliance to secure their right to build under the operative district plan prior to the proposed district plan being made operative.

Issued at Dunedin this 13th Day of September 2016



Andrew Noone
Chair
Hearings Committee

Appendix 1: Copy of Approved Plan for SUB-2016-34
(Scanned image, not to scale)

