

L and S Greer
C/- Leon Hallett
Paterson Pitts
PO Box 5933
Dunedin 9058

Dear Leon

RESOURCE CONSENT APPLICATION LUC-2016-339
480 RICCARTON ROAD WEST
MOSGIEL

The above application to convert a shed to dwelling within the side yard at 480 Riccarton Road West was processed on a limited notified basis in accordance with Section 95 of the Resource Management Act 1991. Independent Commissioner Colin Weatherall heard and considered the application at a hearing on 7 December 2016.

At the end of the public part of the hearing, Mr Weatherall, 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 Mr Weatherall and the hearing's advisor. After the site visit, Mr Weatherall has **granted** consent to the application on 8 December 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:

- Leon Hallett (representing the applicant)
- Steven Greer (applicant)
- Leah Greer (applicant)

Council staff attending were:

- Kirstyn Lindsay (Hearings Advisor),
- Karen Bain (Processing Planner), and
- Wendy Collard (Governance Support Officer).

Submitters in attendance included:

- Conrad Anderson (planner for the submitter)
- Kathy Hood
- Stacey Hood

Procedural Issues

Mr Anderson raised a procedural issue that the Otago Regional Council should have been notified of the application because rule 8.4 in the Second Generation District Plan (2GP). Mr Anderson was unaware that any submissions had been received on that rule and it therefore had legal effect. Mr Weatherall advised that he would investigate the legal status of the rule.

Principal Issues of Contention

The principal issues of contention are as follows:

- Effects on amenity of encroachment into the yard setback breach.
- Visual impact effects of encroachment into the yard setback breach.

Summary of Evidence

Introduction from Processing Planner

Ms Bain outlined the proposal for the conversion of an existing shed on the subject property to a residential unit. She noted that the shed is located six metres off the western boundary adjoining 482 Riccarton Road West. Ms Bain detailed the existing and consented environment and noted that an Otago Regional Council scheduled drain ran along the western boundary of the site shared with 482 Riccarton Road West. After reading the Otago Regional Council Flood Protection Management Bylaw (operative 1 September 2012), it was her opinion that the presence of the drain places constraints on development within seven metres of the top of the bank on either side of the drain.

Ms Bain outlined the planning framework of the Operative District Plan and identified that the site is zoned Rural Residential. She advised that residential activity is a permitted activity on this site, subject to compliance with the performance standards set out in the plan. She noted a six metre setback from the boundary was required for an accessory building which did not house animals. She advised that the existing shed complied with this setback. However, residential activity was required to be set back 10 metres from the boundary and the conversion of the existing shed into a dwelling would mean that this performance standard would be breached by four metres at the south west boundary. Ms Bain explained that under the second generation plan, the subject site is zoned Rural Residential 1 but that the rules of this plan do not have effect at this time.

Ms Bain assessed the proposal as a discretionary (restricted) activity and advised that the Commissioner's discretion was restricted to consideration of the criteria with which the proposal fails to comply; being the side yard breach. Ms Bain summarised the permitted baseline assessment set out in her s42A report and advised that she continued to be of a mind that the baseline should be applied when assessing this application.

Ms Bain considered that the effects on the neighbours were minor but not less than minor and, consequently, the application was limited notified to the owners of 482 Riccarton Road West. Ms Bain acknowledged that a submission in opposition to the proposal was received, which raised issues relating to bulk and location, noise disturbance and visual interaction.

Ms Bain concluded that any effect on the amenity of the surrounding area, and of the neighbouring property at 482 Riccarton Road specifically, arising from the side yard breach of the proposed residential unit can be mitigated by conditions of consent so as to be acceptable. These effects would be comparable with the level of effects that might occur in association with a permitted activity. She recommended that the Commissioner grant consent to the application, subject to the conditions detailed in her S42A report. When questioned specifically about Condition 2 she recommended, Ms Bain believed that an extended time period could be imposed for the planting to maximise seasonal benefits.

The Applicant's Case

Mr Hallett agreed with Ms Bain's summation and recommended conditions. He tabled a plan which identified the restrictions imposed on the site by the yard setbacks and the no-obstruction area required because of the ORC scheduled drain. He noted that the scheduled drain imposed an additional buffer between any residential activities which could occur on 480 and 482 Riccarton Road. The District Plan provided for a combined 20m setback between residential dwellings (10m within each site) and when the no-obstruction area was taken into account for this proposal a separation distance of between 18.88m and 19.42m was achieved even though the dwelling was only setback 6m from the shared boundary. It was Mr Hallett's

opinion that the difference between the separation figures identified and the 20m required by the District Plan was negligible.

Mr Hallett believed that the effects from the bulk of the shed were established in 2008 and was his opinion that there would be very little noticeable difference of undertaking a residential use at either 6m or 10 from the boundary. He noted that outdoor residential activity could occur anywhere on the site including up to, and at, the boundary.

Mr Hallett advised the Commissioner that a building consent had been lodged and was on hold pending the outcome of this hearing.

Evidence of Submitters

Mr Anderson, spoke to the submission of Ms and Miss Hood and to his pre-circulated expert evidence. Mr Anderson raised concerns regarding the hazards associated with the site; namely floor level and the proximity of the structure and planting to the swale and asserted that the application should have been notified to ORC.

Mr Anderson believed that the change of use of the shed would have adverse effects on his client's and that they had very specific requirements with regard to peace and quiet. He tabled a confidential letter to support this statement for viewing by the Commissioner. It was Mr Anderson's opinion that the permitted baseline had little application in this case as it would be unlikely that someone would remove the shed and rebuild a dwelling 10m back from the boundary at the same location on the site. Mr Anderson was unable to assess the degree of mitigation proposed as he did not have the specific planting plan which was proposed as a condition of consent in the s42A report.

In his assessment of environmental effects submitted with his expert evidence, Mr Anderson relied heavily on the preferred development location for the two residential units authorised for 482 Riccarton Road West. The approved location of the dwellings authorised by Consent Order ENV-2015-CHC-23 appeared to conflict with the evidence given by Mr Anderson.

Processing Planner's Review of Recommendation

Ms Bain reviewed her recommendation and addressed the issues raised by the submitter. She remained of the opinion that the activity was restricted discretionary and, as such, the matters to be considered were narrow. She considered that appropriate floor levels for the shed conversion would be considered during the building consent assessment.

In response to Mr Anderson's evidence, Ms Bain did not believe that hazards could form part of the Commissioner's considerations and confirmed that notification rule 8.4 of the 2GP did not have legal effect. Ms Bain considered that the authorised location of the two residential units on 482 Riccarton Road West differed from the preferred location promoted by Mr Anderson and it was her professional opinion that further consent would be required to establish the dwellings in the preferred location on 482 Riccarton Road West as shown in the figure associated with paragraph 4.3 of Mr Anderson's expert evidence. With regard to Mr Anderson's inability to assess the degree of mitigation afforded by the proposed landscaping plan, she noted that the landscape plan was deliberately non-specific to allow flexibility in species. Overall, Ms Bain upheld her recommendation that consent should be granted.

Applicants Right of Reply

Mr Hallett reiterated that residential activity was permitted and anticipated for this site. In terms of bulk and location the shed was lawfully constructed and the effects were already established. As such, he considered it was the effect of the residential activity itself which must be of concern to the submitter and then the issue must relate to whether this activity occurred 10m or 6m from the boundary. He noted that regardless of the location of the dwelling, residents living on the site could undertake everyday residential activity up to, and at, each of the property boundaries if they so desired. That said, Mr Hallett noted that, although the area between the shared boundary and the external western wall had doors and windows, the use of this area was predominantly for utilities and held the LPG tanks and heat pump infrastructure. This established use directed the outdoor living away from the western

side of the dwelling and all outdoor living was located to the north and east, away from 482 Riccarton Road West.

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 to be considered. Regard was given to the relevant provisions of the Rural Residential Zone of the Dunedin City District Plan. 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 Commissioner 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 decision was reached 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 site visit added physical reality to the consideration of the application.

*Pursuant to Sections 34A(1), 104 and 104C of the Resource Management Act 1991 and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to a **discretionary (restricted)** activity being the conversion of an existing shed to a residential unit that breaches bulk and location performance standards, and to the residential use of that structure, at 480 Riccarton Road West, Mosgiel, legally described as Lot 1 Deposited Plan 345233 (computer freehold register 185365), **subject to** conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

- 1 The proposal seeks to convert an existing shed into a residential dwelling. Both resource consent and building consents are required to authorise the conversion. The conversion has already ostensibly occurred and the Greers' are living in the shed. However, when making the decision, no weight was given to the unlawful occupation because (1) compliance and enforcement matters are managed through a separate processes and (2) it is inequitable to allow the existing occupation to influence the outcome of the decision.
- 2 It is accepted that the proposal is a restricted discretionary activity and discretion is restricted to the effects of the encroachment into the side yard. It was noted that additional approvals are required from building control and this process will address the change of use from shed to dwelling in terms of hazards and health and safety.
- 3 The application of the permitted baseline as put forward by Ms Bain is accepted in terms of what can lawfully be established on the site under the operative District Plan and only the effects beyond what can be permitted as of right have been considered.
- 4 It is accepted that the ORC scheduled drain along the shared boundary is contained entirely within the property of 482 Riccarton Road West and the management or maintenance of the scheduled drain does not fall to the applicant at this location.
- 5 With regard to the matter raised by Mr Anderson regarding Rule 8.4 of the proposed 2GP, Council's City Development team, who are responsible for the 2GP, advise that this rule does not have legal effect at this time noting specifically:

"A review of submissions was undertaken to identify rules that did not receive submission in opposition to them, and therefore must be treated operative in accordance with s86F. This review considered submission against rules in the

context of how the plan provisions were related and reliant on each other (e.g. activity status rules that were linked to performance standards, and how the rules were linked to policies and objectives). In determining which rules should be considered operative, if a rule was not able to 'stand-alone' and be used without the need for related provisions that were not operative due to submissions in opposition, the rule was also considered to be not operative as a consequence".

This position is accepted and no further consideration was given to rule 8.4 of the 2GP.

- 6 The approved location of the dwellings authorised by Consent Order ENV-2015-CHC-23 appeared to conflict with the evidence given by Mr Anderson and this determined the degree of weight given to that evidence.
- 7 Notwithstanding the evidence submitted regarding the location of the two dwellings at 482 Riccarton Road West, it is accepted that Consent Order ENV-2015-CHC-23 may never be given effect to and that a single unit may be built anywhere within 482 Riccarton Road West, provided it complies with any required yard setbacks and any ORC restrictions. It is considered that the evidence presented by the applicant (titled Diagram for Hearing, dated 05/12/2016) demonstrated the restricted no-build areas enforced a separation of between 18.88m and 19.42m between the subject shed/dwelling and any permitted dwelling constructed on the site located at 482 Riccarton Road West. When compared to the 20m separation achievable where both dwellings observed the 10m setback from the boundary, this was considered to be a minimal encroachment with negligible effect. In all likelihood, any dwelling on 482 Riccarton Road West may be set back even further from the shared boundary to avoid a potential flood hazard associated with the swale area.
- 8 Mr Anderson argued that the submitter required a higher than normal standard of peace and quiet. In support of this statement, a confidential letter was tabled by Ms Hood. The letter was accepted and read and the matters contained within the letter were awarded appropriate weight.
- 9 With regard to the statement by Mr Anderson that the proposal was at odds with the development pattern of the wider environment, it is noted that the properties surrounding the site are of a similar size as the subject lot and the majority of sites contain a single residential dwelling. While the shed conversion will result in a more modest dwelling than many in the immediate vicinity, it is considered that the development on the subject site is not atypical of the proximate environment.
- 10 The landscaping conditions set out in the s42A report are accepted albeit with a minor changes which extends the time in which to get the planting completed and the maturity of the plants selected. It is considered that the landscaping will screen the shed/dwelling from the property at 482 Riccarton Road West.
- 11 It is considered that the proposed activity is consistent with the relevant objectives and policies of the District Plan and with the objectives and policies of the Regional Policy Statement for Otago and proposed Regional Policy Statement for Otago.
- 12 It is determined that the adverse effects of the proposal will be minor and can be adequately mitigated through conditions of consent.
- 13 It is considered 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 Kirstyn Lindsay, whose address for service is City Planning, Dunedin City Council, PO Box 5045, Dunedin 9058.

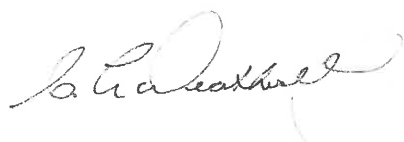
Monitoring

Section 35(2)(d) of the RMA requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works/activity, this consent will require one inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspection will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully



Colin Weatherall
Independent RMA Commissioner

Consent Type: Land Use Consent

Consent Number: LUC-2016-339

*Pursuant to Sections 34A(1), 104 and 104C of the Resource Management Act 1991 and the provisions of the Dunedin City District Plan, the Dunedin City Council **grants** consent to a **discretionary (restricted)** activity being the conversion of an existing shed to a residential unit that breaches bulk and location performance standards, and to the residential use of that structure, at 480 Riccarton Road West, Mosgiel, legally described as Lot 1 Deposited Plan 345233 (computer freehold register 185365), **subject to** conditions imposed under Section 108 of the Act:*

Location of Activity: 480 Riccarton Road West, Mosgiel

Legal Description: Lot 1 Deposited Plan 345233 (computer freehold register 185365)

Conditions

- 1. The proposal shall be undertaken in general accordance with the details submitted with the resource consent application received by the council on 29 July 2016, except as amended by the following conditions of consent*
- 2. A landscaping plan for screening plantings along the boundary adjoining 482 Riccarton Road shall be submitted to rcmonitoring@dcc.govt.nz for approval by the resource consents manager. This plan shall detail the landscaping proposed, including numbers, maturity and species of plants. Trees shall not be included in the proposed plantings.*
- 3. The landscaping plan and associated plantings required by condition 2 above shall be implemented within twelve months of the commencement of this consent, and maintained on an ongoing basis thereafter.*

Advice notes

1. Any future extensions or additions to the residential unit must comply with district plan performance standards, or a further resource consent will be required.
2. In addition to the conditions of resource consent, the Resource Management Act 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. A resource consent is pertinent to the property 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 responsibility of any party exercising this consent 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 is a resource consent. Please contact the Council's Building Control Office, Development Services, about the building consent requirements for the work.

Issued at Dunedin this 15th Day of December 2016

A handwritten signature in black ink, appearing to read 'Colin Weatherall', written in a cursive style.

Colin Weatherall
Independent RMA Commissioner

Appendix 1: Copy of Approved Plans for LUC-2016-339:
(Scanned image, not to scale)



