

8 November 2017

E & M C Chapple
15 Darnell Street
Dunedin 9013

Dear Sir/Madam

**APPLICATION FOR SECTION 127 VARIATION: LUC-2006-370735/A
15 DARNELL STREET
DUNEDIN**

The above application for variation of resource consent LUC-2006-370735, pursuant to section 127 of the Resource Management Act 1991, to amend conditions 1, 4 and 5 of the consent for residential activity on the property at 15 Darnell Street, Dunedin, was processed on a Limited Notified basis in accordance with Section 95 and 95A of the Resource Management Act 1991. The Consent Hearings Committee, comprising Councillors Aaron Hawkins (Chairperson), Andrew Whiley and Commissioner Andrew Noone, heard and considered the application at a hearing on 18 October 2017.

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. A site visit was undertaken by the Hearings Committee immediately following the hearing.

The Committee **granted** consent to the application on 18 October 2017. 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:

- Edwin Chapple (Applicant)
- Dean Benwell (Builder)

Council staff attending were:

- Campbell Thomson (Senior Planner/Advisor to Committee),
- Connor Marner (Processing Planner),
- Barry Knox (Senior Landscape Architect)
- Rebecca Murray (Governance Support Officer) and
- Wendy Collard (Governance Support Officer).

Submitters in attendance at the hearing were:

- Julie & Brent Patterson

Procedural Issues

As part of his opening address to the parties clarifying the hearing process, the Chairperson confirmed the scope of the application, and noted that the consideration of the Committee was limited to certain matters as a consequence.

There were no other procedural matters raised at the hearing.

Principal Issues of Contention

The principal issues of contention addressed at the hearing were:

- The change to the consented development and resulting effects
- The existing non-compliance with conditions
- The intended use of the proposed new accessory building

Summary of Evidence

Introduction from Processing Planner

Ms Connor Marner spoke to a summary of her report, giving an overview of the proposal before commenting on the notification of the application and the submission received.

Ms Marner noted that the existing consent was for residential development on an undersized rural zoned site, within an Outstanding Landscape area. She advised that the current application sought to amend 3 of the 5 conditions of consent. The matters subject to the proposed variation concerned the location of the residential activity within the site, the timeframe for completion of landscape development, and the materials and colour of the buildings. She confirmed the application is a discretionary activity, with the relevant matters being the changed conditions, and the effects of the changes. Ms Marner recommended that the application be granted, subject to appropriate conditions.

In response to questions from the Committee Ms Marner commented on a number of matters as summarised below.

Ms Marner confirmed that legal advice had been sought about the status of the consent and that it had been determined that residential activity had been lawfully established. The issue of the Code Compliance Certificate under building consent was deemed to have given effect to the consent, even though the residential activity was in the building originally proposed as a shed. The correct approach for the approval required for the present land use was therefore considered to be a variation rather than a new resource consent application.

Ms Marner confirmed a LIM had been applied for by the applicant and the information provided did specify there was a resource consent for the site, but did not detail conditions. With regard to the location of the buildings, she noted that the variation proposed that the dwelling originally intended not be built and a smaller farm shed be built within the footprint of the dwelling location.

In relation to the transportation requirement of Condition 3 Ms Marner advised that when consent was approved in 2006 the original 42A report did not clearly state the reasons behind this, therefore clarification has been sought from Transportation. However, it was noted this is not a matter that could be considered with the application.

The Chairperson noted that Ms Marner had recommended staged planting within 2 years of consent being granted, whereas the applicant had offered completion of planting within 1 year. Ms Marner advised that this was to make sure that there was enough flexibility in the condition as one year may only allow one planting season.

Ms Marner advised that the variation to the cladding condition was required due to the original shed becoming the dwelling. The construction and cladding intended for the dwelling as a separate building under the original consent would not be possible.

Ms Marner indicated that the proposed shed would be a permitted activity if it was accessory to farming activity. If it is accessory to residential activity it would be a residential accessory building and be subject to the consent. As the site is within a Landscape area consideration

must be given to effects on the natural landscape. She confirmed that mitigation planting was therefore required for the building

In regard to questions about the status of the proposed shed, the advisor to the Committee **Mr Campbell Thomson** clarified the status of the building under the District Plan. He noted that the Plan defined such buildings as accessory buildings, ancillary to a land use such as farming and residential activity. The proposed building must therefore be assessed as either a farm shed or a shed associated with a residential activity. Mr Thomson confirmed that an accessory building could not be used as a dwelling. While occupation as a sleepout may be allowed by the District Plan, an accessory building could not be a self-contained residential unit. Mr Thomson noted that under the Building Act there is a clear difference between a habitable and non-habitable building. He indicated that upon any application for building consent, the building plans would be checked for any proposed facilities. While a toilet may be allowed in an accessory building, if it was to contain a kitchenette or other facilities to make it self-contained, the building would be assessed as a dwelling.

The Applicant's Case

Mr Edwin Chapple spoke to the application and commented that he had lived at the site for 7 years. He advised that he always intended not to build a new dwelling and to continue to live in the existing building. He did not realise that he would need to go into the planning process to do this, as he thought the new building originally proposed was optional. He indicated that the existing building was fitted out for residential use when he moved in. It had a kitchen and other facilities but did not have wall linings. He immediately started converting the building into a dwelling. He did not realise that he needed permission as he had not seen a planner but had a building consent which was signed off.

Mr Dean Benwell – spoke in support of Mr Chapple and assisted him in regard to questions about the application and site development.

In response to questions from the Committee Mr Chapple advised he could complete all of the fencing within the two years. He advised that since he owned the property 5 acres of native bush has been fenced off and he has done some additional fencing. In regard to the cladding of the proposed shed Mr Chapple advised that it would be constructed in accordance with Council requirements. He noted that it will be partially obstructed by the earthworks, and will not be seen from No 7 Darnell Street or from the road or St Clair due to what is already on the property. He referred to the cross section view on page 36 of the Hearing Agenda. Mr Chapple indicated that he did not generate any farm income from the property. He advised that the proposed shed is to be a two bay lean-to shed, open at the front, with a gravel floor.

Technical Officers' Evidence

Mr Barry Knox commented briefly on the technical advice he had provided, and responded to questions. He noted that with the original application for resource consent there was a lot of evidence giving by a landscape architect, Mike Moore, and Mr Knox thought that the effects of the development were no more than minor. The effects with the variation would make it less than the original application.

Mr Knox advised that the landscape character of the area was very much the same as in 2006, and is an important landscape area. The new condition for landscape mitigation should be similar to the original condition. The scale and character of effects on landscape are reduced as the accessory building is of a lesser scale than the dwelling originally proposed. Views from Centre Road and Tomahawk were relevant to the assessment of landscape effects. In regard to objectives and policies of the plan for landscape, Mr Knox indicated that the colour of buildings was an important factor contributing to the impact of manmade structures against the natural environment. Comparing the character of a house versus a farm shed on the wider environment, Mr Knox noted that the wider environment of the site is farming and the site is quite close to a residential area. The effects of either form of building are not materially different.

Evidence of Submitters

Mr Brent Patterson spoke to the submission and the concerns of he and his wife had with the application. **Mrs Julie Patterson** endorsed his comments.

Mr Patterson commented on the background to the original consent and intent of the previous owners. There had been no concerns that the original owners wanted to live temporarily in the garage and the submitters had given approval on this basis. Mr Patterson felt the variation of this consent would set a precedent, and expressed concerns that compliance of consents are never checked and that consents are granted retrospectively. He tabled a photograph taken from his property as evidence.

Mr Patterson acknowledged the advice of the Chairperson regarding the scope of the variation but wished to record concerns regarding the state and safety of the driveway. Mr Patterson commented on concerns in regards to the building consent and the permanent usage of the existing building as a residence. Mr Thomson noted the statutory requirements made no distinction between a temporary and permanent residence as there was no middle ground between a habitable and non-habitable building.

Mr Patterson advised that the biggest concern was that the second building proposed may be used as a second dwelling or as a sleep out. If consent is granted then it must be made very clear the proposed accessory building is to be a farm shed. In relation to this Mr Patterson commented on the code of compliance for the existing building, and suggestions for a condition to ensure the proposed building is not used as a sleepout or dwelling.

Mr Patterson advised that he still wanted the application declined as he considered the site should be developed in accordance with the original consent. He did not think that Mr Chapple needed a second building as a shed. In relation to the tabled photograph Mr Patterson indicated where the photo was taken from and the location of his property in relation to the subject site. In relation to the advice notes in the consent about access he indicated the existing driveway is not the driveway original proposed, suggesting that a temporary access was sealed over to enable the previous owners to sell the land.

In response to questions about the landscape effects Mr Patterson indicated that in his view it was dependant on the planting being done and compliance adhered too as per the original planting plan and access. He contended the access made a big difference, and that parties to the original consent had agreed to the original planting with access way on the other side. He considered the applicant had made no attempt to comply with the consent.

While acknowledging the proposed new building was smaller than the original dwelling proposed, Mr Patterson contended that it would be a waste of the land as it is a good block for a family home. He would not have agreed to the original consent if the proposal had been on this basis and consider the present development a waste of a resource. While it was proposed the shed have three sides and a roof, he considered that once the footprint is established it would be easy to develop it into a residential unit.

In relation to the timeframe for landscape planting Mr Patterson observed that natives take a long time to establish. He advised that if they are planted and watered then we would be happy with anything undertaken.

Processing Planner's Review of Recommendation

Ms Marner reviewed her recommendation in light of the evidence presented at the hearing, maintaining her recommendation to grant consent.

She provided clarification on the recommended landscape plan condition which included a requirement that shelter plantings be completed within the two years. She noted that condition one of the consent could be changed to require that the proposed accessory building not be used as a dwelling, as the site development consented was for one dwelling and one accessory building.

She acknowledged the submitter's concerns regarding the access.

Applicant's Right of Reply

Mr Chapple reiterated positive aspects of the application and asked for consent to be granted. He commented on the planting required, and noted that he did not have the landscape management plan prepared by Mr Moore at the time he purchased the property. He has obtained a copy from Council and is obtaining advice carrying out native planting. He commented on the submitter's concerns and advised that he had no intention to convert the accessory building into a dwelling.

Mr Benwell commented on the proposed timeframes for completion of planting and suggested an alternative timing linked to the completion of earthworks. Mr Chapple indicated he would like it to be 12 months following the completion of the year. He commented on the submitter's concerns regarding the access way.

Mr Chapple indicated that if consent is granted the screen planting around the house will be completed almost immediately as he had plants ready for this. He anticipated that he should be able to complete the planting around the shed in the autumn, meeting his obligations within the 12 months. He re-iterated that he had not been aware that his residential use was non-complying.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Sec42A report detailed in full the relevant statutory provisions and other provisions the Committee considered. Regard was given to the relevant provisions of the Dunedin City District Plan: In particular Section 6 (Rural and Rural Residential Zones), and 14 (Landscape), and the relevant provisions of the proposed Dunedin City District Plan. Consideration was also given to the Regional Policy Statement for Otago and Proposed 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 and the principal 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. A visit to the site subject of the application and to the submitter's property was undertaken on the date of the hearing, immediately following the closure of the public hearing, and prior to the Committee's deliberations.

*That pursuant to section 34A(1) and 104B and after having regard to section 104 of the Resource Management Act 1991, and to the provisions of the Operative Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **discretionary** activity being the variation of Conditions 1, 4 and 5 of Resource Consent LUC-2006-370735, imposed under section 108 of the Act, in relation to the land at 15 Darnell Street, Dunedin, legally described as Section 5-6 Block VII Andersons Bay Survey District (Computer Freehold Register OT275/10).*

The amended consent conditions are set out in the attached certificate.

Reasons for this Decision

1. The Committee are satisfied that provided that the conditions of consent (as amended by this decision) are implemented, the likely adverse effects of the residential activity and associated buildings can be adequately mitigated and will be no more than minor.
2. The proposed variation of the conditions is considered by the Committee to be consistent with the key objectives and policies of the statutory plans relevant to the development of residential activity on rural zoned land. This includes the provisions

of the current operative Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, as well as the relevant objectives and policies of the Operative and Proposed Regional Policy Statement for Otago.

3. Overall, the Committee determined that the effects arising from the variation sought will result in an environmental outcome that is generally consistent with that anticipated and authorised by the existing land use consent. The proposed changes to the site development reduce the overall footprint, bulk and scale of the approved building development originally anticipated. The variation will not alter the requirements of the landscape management plan with the exception of timeframe for completion of works, and the proposed colour and cladding detail of buildings now sought will not increase the visual impact.
4. The Committee considered that subject to compliance with the conditions as varied by this decision, the residential land use will not detract from the natural elements of the Peninsula Coast Outstanding Landscape Area which the Dunedin City District Plan seeks to protect.

Commencement of Consent

In accordance with Section 116 of the Resource Management Act 1991, this variation to the conditions of resource consent LUC-2006-370735A shall only commence once the time for lodging an appeal against the grant of the consent expires and no appeal has been lodged, or the Environment Court determines the appeal or appellants withdraw their appeal, unless a determination of the Environment Court states otherwise. In the meantime the existing consent conditions will continue to apply.

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 Campbell Thomson, 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, and the scope of the variation granted, this consent will require at least one inspection.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspections 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

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized flourish at the end.

Aaron Hawkins
Chair, Hearings Committee

Consent Type: Land Use Consent

Consent Number: LUC-2006-370735/A (Previously identified as RMA-2006-0973)

Purpose: The consented activity is for residential development on an undersized rural zoned site, within an Outstanding Landscape area, comprising a dwelling and an accessory building

Location of Activity: 15 Darnell Street, Dunedin

Legal Description: Section 5 – 6 Block VII Andersons Bay Survey District (Computer Freehold Register OT275/10)

Lapse Date: Not Applicable: the consent has been given effect and the purpose of this certificate is to set out the conditions as amended by the decision on variation LUC-2006-370735/A.

Conditions:

- 1 ~~That the proposed activity shall be given effect to generally in accordance with the undated plans titled 'Proposed building siting plan' (Figure 6) and Property Landscape Development/Management Plan' (Figure 7) and the information submitted as part of resource consent application RMA 2006-0973 received by Council on 12 October 2006, and the undated plans of the dwelling and accessory buildings tabled at the hearing as part of Mr Christensen's evidence, except where modified by the following conditions; The proposal shall be constructed generally in accordance with the plans and relevant details submitted with the variation to resource consent application received by Council on 2 June 2017 and the Landscape/Management Plan submitted as part of the original resource consent LUC-2006-370735 received by Council on 12 October 2006, except where modified by the following conditions:~~
- 2 The vehicle access shall be designed to minimise longitudinal gradients.
- 3 The maximum change in gradient without transition shall be no greater than 8°.
- 4 Landscape development shall be implemented and maintained in accordance with the detail outlined in Mike Moore's evidence tabled at the original consent hearing in December 2006, specifically Paragraphs 22-26, Appendix A (plant species list) and the attached plans of the areas to be planted. This landscape development must be undertaken in the following stages:
 - (i) Stage 1 comprising, at least, the fencing of existing native bush and the waterways to prevent access by stock, and the plantings to screen the dwelling (formerly shown as shed on 2006 plans) and the vehicle access to the buildings. ~~This work must be completed within two years of the date of this consent and before construction on the dwelling commences. This work must be completed within two years of the date of acceptance of the condition variation.~~

- (ii) Stage 2 comprising, at least, the plantings to screen the farm utility shed (building proposed in 2017 variation). ~~This must be completed within 12 months of the residential occupation of the dwelling. This must be completed within two years of the date of acceptance of the condition variation.~~
- (iii) Stage 3 comprising the remainder of the landscape development and site development controls. This work should be undertaken at a steady rate and shall be ~~completed within 10 years of the date of this consent~~ completed within five years of the date of acceptance of the condition variation. Note, Council staff will monitor compliance with this condition at two-yearly intervals.
- 5 ~~The timber weatherboards of the proposed dwelling shall be stained or painted before fixing so that the timber does not weather to a very light colour that would appear bright when viewed from off the site. All stained or painted surfaces of the buildings shall have a reflectivity value of 10% or less. The consent holders shall submit to Council's Architecture and Urban Design department, for the approval of the Landscape Architect, the proposed colour of any timber stain or paint to be applied to the weatherboards and the proposed colours and materials for the dwelling's roof and the exterior surfaces of the accessory buildings. The dwelling (existing building 2017) and proposed farm utility shed shall be clad in Endura Colour steel and the colour shall be Grey Friars in keeping with the existing structure. All stained or painted surfaces of the buildings shall have a reflectivity value of 10% or less~~

Advice Notes:

1. For the avoidance of doubt, the consent as amended by this variation authorises the continued use of the first building established on the site as a dwelling rather than as a shed as originally proposed in 2006, and the construction of a new building as a farm utility shed. This new building is not authorised to be modified for use as a habitable building.
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. 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 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 resource consent only. Please contact the Building Control Office, Development Services, about the need for building consent for construction of the proposed shed.
6. The vehicle access, from the carriageway to the property boundary, is over legal road and is therefore required to be constructed in accordance with the Dunedin City Council Vehicle Entrance Specification (available from Transportation). This applies to the entire access formation serving the property that is located within the legal road being Darnell Street.

7. The vehicle access must be designed to minimise longitudinal gradients. Detailed design plans for the vehicle access must be submitted to, and approved by, the DCC Transport Group. The design shall be prepared by a suitably qualified professional, and shall be generally in accordance with AS/NZS 2890.1:2004, Clause 2.6.2. The vehicle access must be upgraded in accordance with the approved plans.
8. In the event of any future development on the site, Council's Transport Department would assess provisions for access, parking and manoeuvring at the time of resource consent/building consent application.
9. All aspects relating to the availability of the water for fire-fighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies, unless otherwise approved by the New Zealand Fire Service.
10. All construction work on the site must be designed and conducted to ensure that construction noise from the site does not exceed the noise limits in the following table.

Time of Week	Time Period	Leq (dBA)	L max(dBA)
Weekdays	0730-1800	75	90
	1800-2000	70	85
	2000-0630	45	75
Saturdays	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public	0730-1800	55	85
Holidays	1800-2000	45	75
	2000-0630	45	75

Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803: 1999 Acoustics – Construction noise.

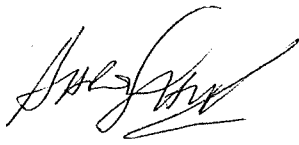
11. Environmental Health advises that matters concerning dust and odours from construction are dealt with by the Otago Regional Council.
12. Environmental Health advises that household and solid waste must be removed at regular intervals to an authorised refuse tip, so as not to cause a nuisance. Burial on site is not permitted.
13. The consent holders are advised that earthworks for construction of the shed must not commence until land use consent LUC-2017-279 is issued.

The following advice notes contained in the original consent are redundant as a consequence of building consent for the present residential use:

Council's Engineers, MWH, advise the consent holders that any proposal to site the on-site effluent disposal system on slopes exceeding 15° to the horizontal, Council will require the system to be specifically designed by a suitably qualified person.

The consent holders are advised to refer to the Dunedin City Council "Guide To On-site Waste Water Management" which sets out the requirements for water supply and waste water for rural sites. Copies are available at the Dunedin City Council Building Control counter and may be further discussed with the Duty Drainage Inspector or the Technical Support Officer.

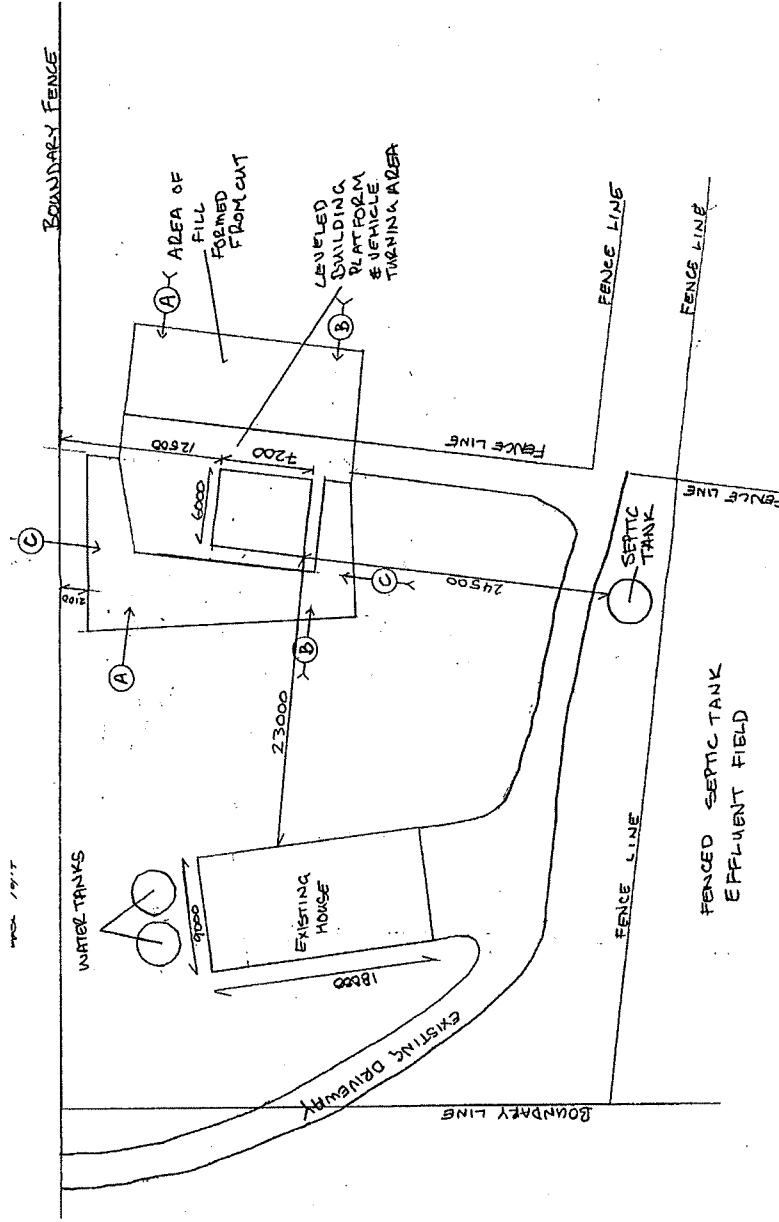
Issued at Dunedin this 8th day of November 2017 pursuant to Sec127 of the Resource Management Act 1991.

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized, sweeping flourish at the end.

Aaron Hawkins
Chair, Hearings Committee

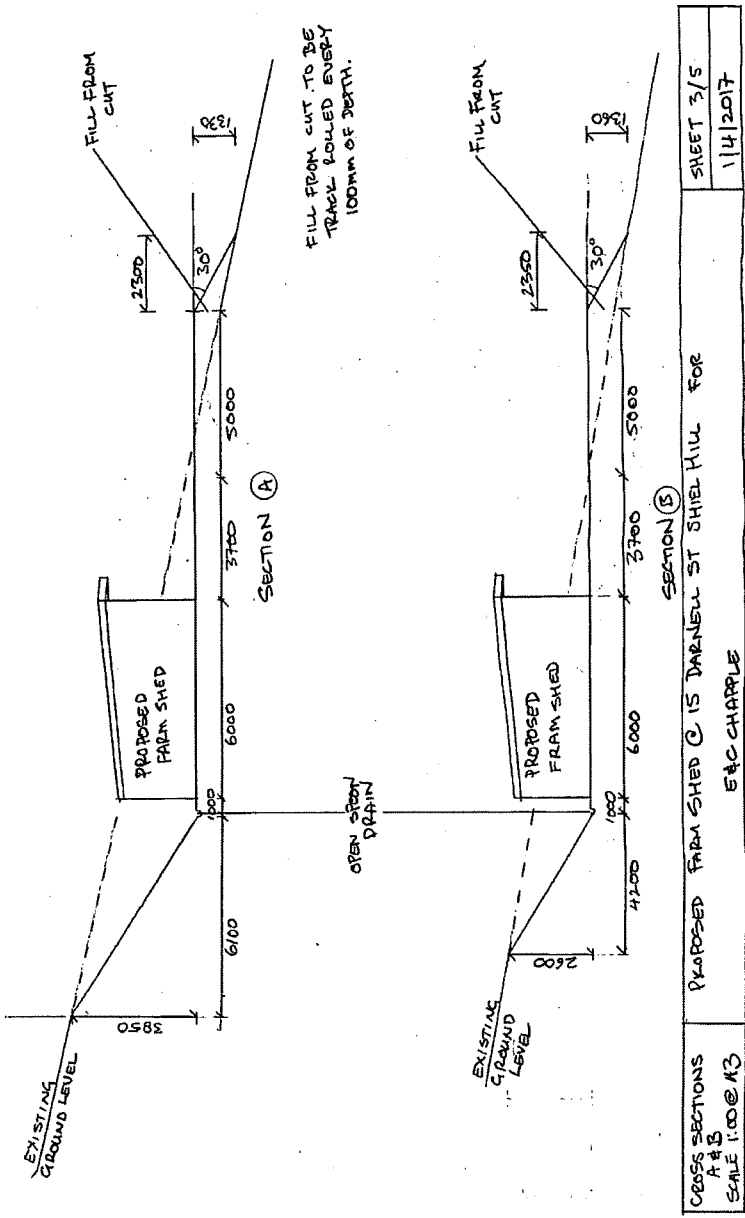
Appendix 1: Copy of Approved Plans for LUC-2006-370735/A
(Scanned image, not to scale)

Site Plan for Farm Shed dated April 2017

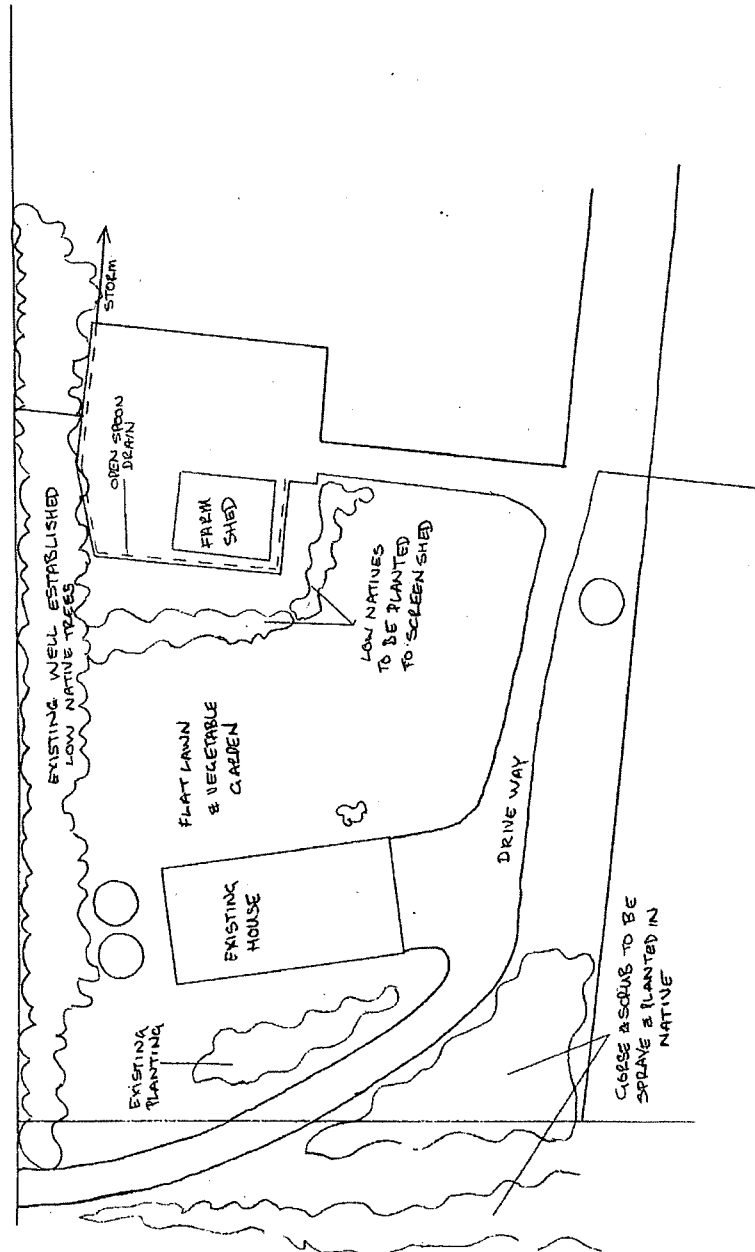


SITE PLAN SCALE 1:1250 B. AS	PROPOSED FARM SHED @ 15 DARNELL ST SHIEL HILL FOR B#C CHAPPLE	SHEET 2/5 1/4/2017
------------------------------------	--	-----------------------

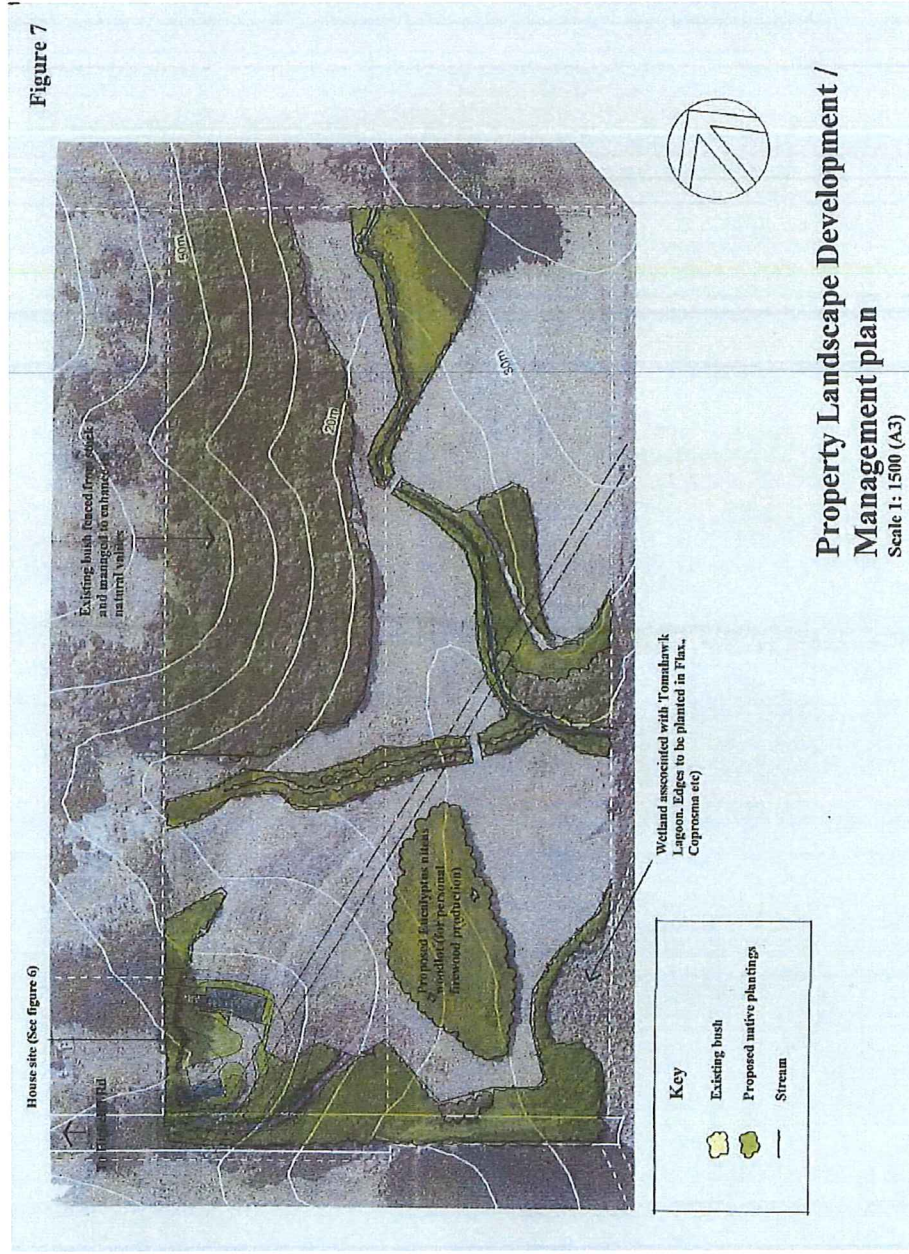
Cross Section Drawing for Farm Shed dated April 2017



Proposed Vegetation Site Plan April 2017



VEGETATION SITE PLAN SCALE 1:500 @ A3	PROPOSED FARM SHED @ 15 DARNELL ST SHIEL HILL FOR E & C CHAPPLE	SHEET 5/5
		1/4/2017



Appendix A : Planting development and management guidelines 15 Darnell St, Dunedin

Ensure that the planting areas are securely fenced off from grazing animals. Include rabbit proof fencing as required. Spray the areas to be planted to kill competing vegetation. Plant the species listed below at densities of 1.5 -2m. Plant with one slow release fertilizer tablet per plant. Apply a 500mm radius ring of mulch 100mm deep around each plant. Weed or spray as required to ensure weed species do not impede successful plant establishment. Undertake on-going animal pest control, and water as required. Replace any dead plants.

- *Phormium tenax* (Flax)
- *Coprosma propinqua* (Mingimingi)
- *Coprosma crassifolia*
- *Cordyline australis* (Cabbage tree)
- *Cortaderia richardii* (Toetoe)
- *Myoporum laetum* (Ngaio)
- *Myrsine australis* (Matipo)
- *Griselinia littoralis* (Broadleaf)
- *Fuchsia excorticata* (Native fuchsia)
- *Hebe salicifolia* (Koromiko)
- *Melicetyus ramiflorus* (Mahoe)
- *Kunzea ericoides* (Kanuka)
- *Pittosporum eugenioides* (Lemonwood)
- *Pittosporum tenuifolium* (Kohuhu)
- *Hoheria angustifolia* (Narrow-leaved lacebark)