

15 December 2020

L W Carruthers  
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PO Box 5724  
Dunedin 9054

Via email: [emma@sweepconsultancy.co.nz](mailto:emma@sweepconsultancy.co.nz)

Dear Mr Carruthers

**RESOURCE CONSENT APPLICATION:**

**LUC-2019-623  
6366 HYDE-MIDDLEMARCH ROAD  
MIDDLEMARCH,**

The above application to erect a dwelling on a 13.8 ha Rural property at 6366 Hyde-Middlemarch Road, Middlemarch, was processed on a limited notified basis in accordance with section 95 of the Resource Management Act 1991. The Consent Hearings Committee, comprised of Councillors David Benson-Pope (Chairperson), Sophie Barker and Steve Walker, heard and considered the application at a hearing on 2 December 2020.

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.

The Committee did not undertake a site visit because they had received sufficient information at the hearing on the site location, physical character and context to evaluate the environmental effects of the proposal.

The Committee has **granted** consent to the application on 2 December 2020. 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:

Emma Peters (Consultant Planner)  
Lindsay Carruthers (Applicant)

Council staff attending were:

Campbell Thomson (Advisor to Committee), Shane Roberts (Consultant Processing Planner), and Jenny Lapham (Governance Support Officer).

Submitters in attendance were:

Vivienne Robertson (accompanied by her daughter Jo Robertson in support)

## **Procedural Issues**

The status of the late submission received was considered by the Committee. Emma Peters objected to the late submission and the panel noted this objection. However, the Committee resolved that the late submission from Vivienne Robertson be accepted

## **Principal Issues of Contention**

The principal issue of contention was the location of the proposed dwelling within the site and potential effects, particularly on the views from neighbouring properties opposite the site in Milford Street.

## **Summary of Evidence**

### Introduction from Processing Planner

The Consultant Planner (Shane Roberts) spoke to a summary of his report, giving an overview of the proposal before commenting on the notification of the application and the submissions received.

Mr Roberts advised that consent was being sought to establish a dwelling on an undersized rural lot. He noted that the siting proposed for the dwelling as shown in the application site plan was 100 metres from Hyde-Middlemarch Road and 47 metres from Milford Street, Middlemarch. These dimensions had been annotated as to be confirmed. Mr Roberts provided an overview of the activity status and assessment of the application against the Operative District Plan and the Proposed 2GP. Mr Roberts recommended that the panel grant consent, subject to conditions.

In response to questions from the Committee, Mr Roberts advised that should the proposed siting of the dwelling be shifted it might have significant implications for the notification assessment. If closer to the road or other neighbours, additional parties could be considered adversely affected. He assisted with clarification around the extent of land classified in the 2GP Maps as containing high class soils, and advised the proposed dwelling location was not considered to be within an area of land identified as containing high class soils.

Mr Roberts confirmed that if the proposed siting of the dwelling was further down the paddock (i.e. away from the road) it was likely to reduce the effects on the submitters, however, he also noted that ancillary buildings would be a permitted activity

### The Applicant's Case

Ms Peters requested that her evidence be taken as read. She spoke to the evidence and advised applicant is committed to the location as put in the application. She noted that the siting of the dwelling needed to avoid certain lower lying areas on the land comprising unmapped swales. She advised that if consent is granted, Mr Carruthers will engage a surveyor to locate the dwelling in the appropriate place when an application is sought for a building consent. If any reason it was not in general accordance with approved location, the proposal would be subject to an application for variation to the land use consent.

Ms Peters commented on the permitted baseline effects, outlining a range of activities that can occur on the site which are permitted, as set out in her evidence and would have a greater impact.

### Evidence of Submitters

Mrs Vivienne Robertson spoke to her submission commenting on her concerns about the dwelling location, and the importance of the views from her property for her Artwork and enjoyment of her property. The Committee asked questions about the views in reference to images of the subject site and Milford Street properties. Jo Robertson spoke in support of her Mother.

### Processing Planner's Review of Recommendation

Mr Roberts reviewed his recommendation in light of evidence presented at the hearing. He maintained his recommendation that consent should be granted. He also confirmed that there were no identified high class soils on the property.

### Applicants Right of Reply

Ms Peters reiterated the positive aspects of the application and asked for consent to be granted.

Ms Peters advised that Mr Carruthers is planning on residing in the new house and renting out his current house, and that he has no plans to put up farm buildings on the property at this stage. She noted that while he may in future look at other buildings ancillary to the dwelling, which are permitted by the District Plan, he has invested in substantial farm sheds on the other property titles comprising the farm.

Ms Peters advised that Mr Carruthers was prepared to offer up a condition that the house wouldn't be in line with driveway to Mrs Robertson's dwelling. However, he did not want to impinge on the other submitter as that person was happy with the siting dimensions set out in the application. She noted that Mr Carruthers was going to be landscaping the dwelling site with native vegetation, and would accept a related condition about planting around water tanks and other structures associated with the dwelling, and advised that the tanks would be in an appropriate colour.

### **Statutory and Other Provisions**

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 Dunedin City District Plan 2006: 4 Sustainability, 6 Rural Zones, 20 Transportation, and 21 Environmental Issues. Regard was also given to the relevant provisions of the following sections of the Proposed Second Generation District Plan: B.6 Transportation, C.9 Public Health and Safety, and D.16 Rural Zones. Statutory provisions considered included the 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, and the principle issue in contention. The main findings on the principal issue 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.

*That pursuant to Section 34A(1) and 104B and after having regard to 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 the establishment of residential activity (construction of a dwelling) on the site at 6366 Hyde-Middlemarch Road, Middlemarch, legally described as Section 1 Survey Office Plan 23734 (Record of Title OT14D/1174), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

## **Reasons for this Decision**

1. The Committee believe that the adverse effects of the proposal will be no more than minor, provided that the location of the dwelling within the subject site, and associated site development, is undertaken in accordance with the conditions of the resource consent.
2. The Committee recognise that the submitters currently enjoy an outlook to the north from their properties that is largely unbroken for some distance by any structures or any trees (except on their own properties), as the subject site is relatively flat open pastureland, with the nearest shelterbelt to Milford Street running north/south. However, the Committee are mindful that the applicant is not obliged to maintain the land in the present state. Farm buildings and structures could be established on the property as a permitted activity under the District Plans. Likewise, further shelter plantings could be established without consent from the Council. There are restrictions in the rural zone provisions on the set back of both buildings and shelter trees, and on the tree species, but given the size of the subject site these restrictions can be complied with.
3. In regard to the density of residential activity, the Committee are mindful that the planning rules for the site are in a process of transition from the 2006 Operative District Plan to the Proposed District Plan (2GP). It is noted that the proposal is 1.2ha short of the minimum area required for residential activity under the Operative District Plan, and in terms of this Plan a boundary adjustment subdivision could achieve the same outcome sought by this land use application. Under the Proposed 2GP this alternative is not possible, but the rule provisions are subject of Appeal.
4. The Committee considers that the proposed residential activity is consistent with the relevant objectives and policies of the Operative District Plan, but accepts that it is contrary to key objectives and policies of the Proposed 2GP.
5. The Committee are satisfied that the proposed residential activity is generally consistent with the objectives and policies of the Regional Policy Statement for Otago.
6. The Committee believe that the proposal will not give rise to more than minor adverse environmental effects and satisfies one of the gateway tests 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.
7. The Committee considers that the proposal does not represent a challenge or threat to the integrity of the District Plan or establish an undesirable precedent for future applications. The Committee are satisfied the proposal is a relatively unique and confined proposal, and given the matters set out in reason 3 above, the Committee consider the proposal is unlikely to undermine public confidence in the provisions of the District Plans.
8. 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.

## **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 Mail Centre  
Christchurch 8013

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

- The Dunedin City Council.
- The applicant(s).
- 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.

### **Commencement of Consent**

As stated in Section 116 of the Resource Management Act 1991, this consent will 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.

### **Monitoring**

Section 35(2)(d) of the Resource Management Act 1991 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 annual 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



David Benson-Pope  
**Chair**  
**Hearings Committee**

**Consent Type:** Land Use Consent

**Consent Number:** LUC-2019-623

**Purpose:** The establishment of residential activity (construct a dwelling).

**Location of Activity:** 6366 Hyde-Middlemarch Road, Middlemarch,.

**Legal Description:** Section 1 Survey Office Plan 23734 (Record of Title OT14D/1174).

**Lapse Date:** 15 December 2025, unless the consent has been given effect to before this date.

### Conditions

1. *The proposed activity must be undertaken in general accordance with the site plan and relevant details and information submitted with resource consent application LUC-2019-623, received by the Council on 27 November 2019, except where modified by the following conditions.*
2. *The location of the dwelling must be consistent with the siting dimensions shown on the application site plan, subject to any minor adjustment necessary to avoid swales within the property, and to ensure the bulk of the dwelling will not be in a direct line of view from the driveway of 16 Milford Street (i.e. crossing a notional line running north of the driveway entrance).*
3. *At the time of applying for building consent for the dwelling, the consent holder must supply a plan prepared by a surveyor verifying compliance with Condition 2 to [rcmonitoring@dcc.govt.nz](mailto:rcmonitoring@dcc.govt.nz) for approval by the Council's Resource Consents Manager.*
4. *The new access to service the dwelling must be installed prior to occupation of the dwelling. The access must:*
  - (a) *Be hard surfaced from the edge of the seal of Milford Street to the property boundary for a minimum of 5.0m;*
  - (b) *Be a minimum 3.5m and maximum 6.0m formed width; and*
  - (c) *Be adequately drained for its duration.*
5. *The residential unit must have access to sufficient water supplies for firefighting consistent with the SNZ/PAS:4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice.*
6. *At the time of applying for building consent for the dwelling, the consent holder must supply a landscape plan to [rcmonitoring@dcc.govt.nz](mailto:rcmonitoring@dcc.govt.nz) for approval by the Council's Resource Consents Manager. The plan must:*

- (a) *detail the landscaping planting proposed for the site;*
  - (b) *identify how the planting complements the design and appearance of the proposed dwelling on the site, and mitigates any adverse effects on rural amenity; and*
  - (c) *include a maintenance regime.*
7. *The planting shown on the landscaping plan certified under Condition 7 must be fully undertaken no later than first planting season following occupation of the dwelling. Completion of the planting activity must be confirmed by notifying Council at [rcmonitoring@dcc.govt.nz](mailto:rcmonitoring@dcc.govt.nz) within one month of completion of the planting.*

#### **Advice Notes**

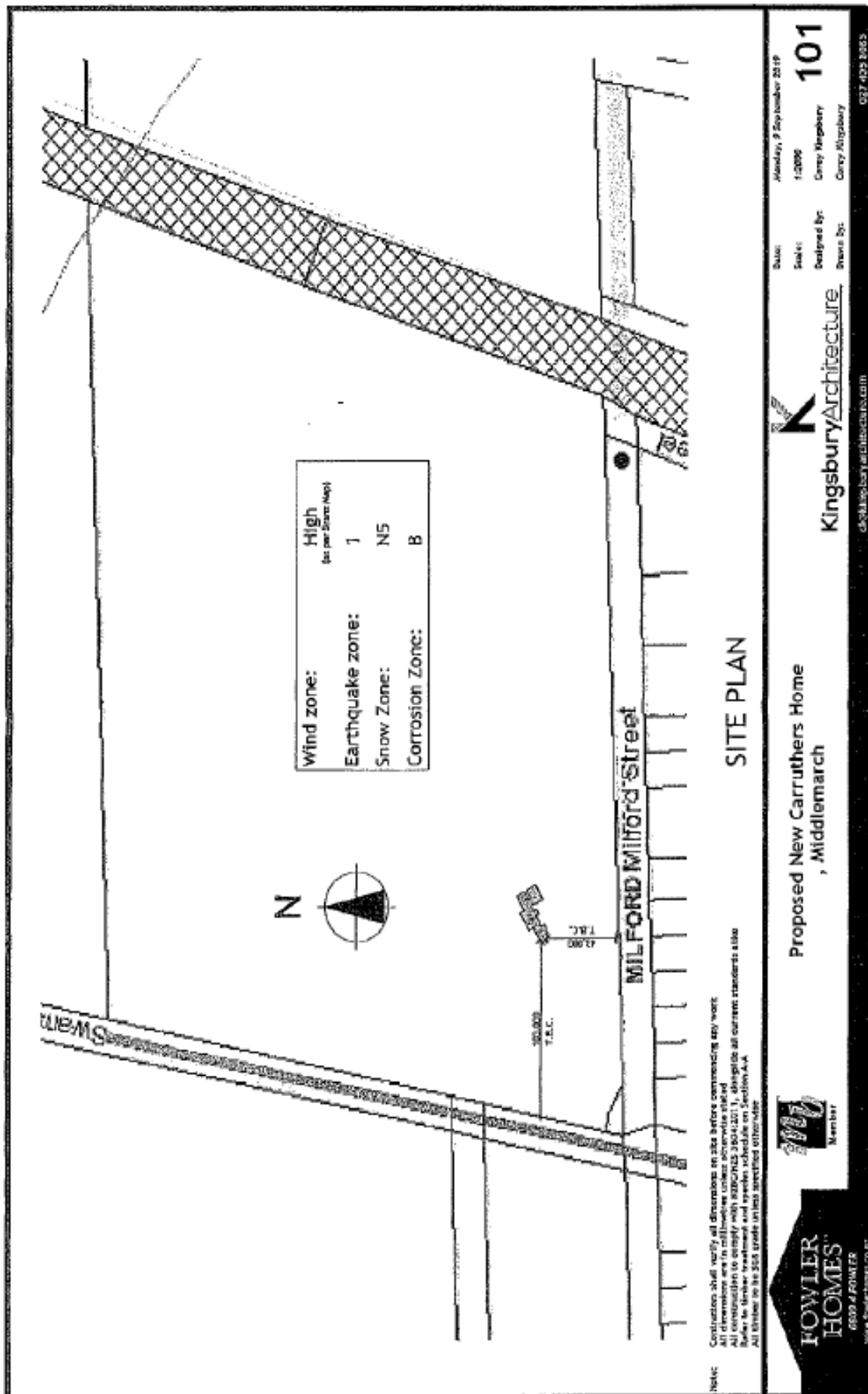
1. Please check with the Council's Building Control Office, Development Services, to determine the building consent requirements for the dwelling and associated works.
2. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty 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 will 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.

Issued at Dunedin on 15 December 2020

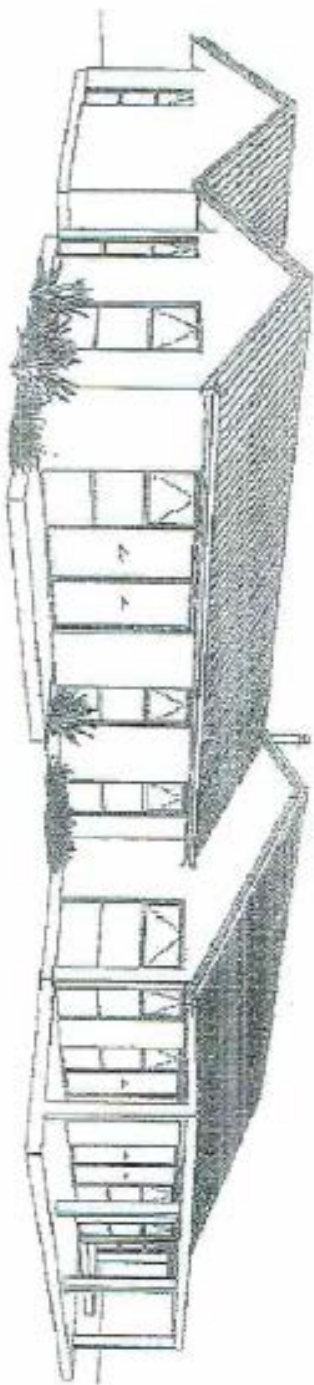


David Benson-Pope  
**Chair**  
**Hearings Committee**

Appendix 2: Site Plan



The dwelling will be single level and will look something similar to the elevation shown below:



North Elevation.