

TO: Hearings Panel

FROM: Andrew Henderson, Consultant Planner

DATE: 13 May 2019

SUBJECT: **RESOURCE CONSENT APPLICATION LUC-2018-664
16 COAST ROAD, WAITATI**

1.0 INTRODUCTION

- [1] This report has been prepared on the basis of information available in the updated application document provided on 5 March 2019 and the submission received following the limited notification of the proposal.
- [2] The purpose of the report is to provide a framework for the Commissioners' consideration of the application and the Commissioners are not bound by any comments made within the report. The Hearings Commissioners are required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

2.0 DESCRIPTION OF ACTIVITY

- [3] Cargill Contracting Ltd (The applicant) has applied to establish and operate a contractor's yard and a building construction yard. The activity will also include the retail of landscaping supplies to the public from the site. The activity is described in detail in the application and associated Assessment of Effects on the Environment prepared by Survey Waitaki Ltd, and the Commissioner is referred to that document. For the Commissioner's convenience, the application is summarised as follows:
- Extending an area of fill on the site in a northerly direction by 70m with a width across the site of approximately 100m (comprising up to 8,000m³ of material) to create a platform for operations that will be 1m above existing ground level. Completing the fill and preparing the site is estimated to last 6 months, with works being undertaken between 6am and 8pm Monday to Saturday, and 10am – 2pm on Sundays.
 - Bunding around the site which will be planted with native and exotic trees. The bund will be 2.5m above ground level on the outside and 1.5m on the inward side due to the built up nature of the land inside the bund.
 - A workshop with a plan area of 12m x 14.4 m (172.8m²) and 3.9m high will be located in the south east corner of the site and will include a cloak room, toilets and a smoko room. The building will be clad in 'Thunder Grey' colour steel or similar.
 - A portable office building will be located adjacent to the workshop, and will be 8m x 4.2m (33.6m²) in area, and 3m high.
 - The retail of landscaping products will include:

- > fencing materials (posts, gates, wire, wood);
 - > gravels, rock and aggregates;
 - > bark and chipped wood;
 - > Pipes, culverts, head walls, sumps, water troughs and tanks; and
 - > other such bulk materials useful to the rural area of Blueskin Bay as demand dictates.
- The yard and retail activity will operative been 6am and 8pm Monday to Saturday and 10 am – 2pm Sunday.
 - Currently up to 20 staff are employed by the applicant in respect of the contractor's yard, who may come to the yard in the morning for a briefing and then deployment to various locations.
 - A new access is to be off King Street, avoiding the need for direct access off State highway 1.
 - The building construction yard is to be operated by Mopanui Studio Homes Ltd who construct small relocatable buildings which are transported off site. Up to two buildings will be under construction at any one time. Construction times will be between 7 am and 5.30 pm Monday to Saturday.

[4] A restricted water supply will be provided from the DCC's reticulated supply to the area. Wastewater will be addressed through a Council approved septic tank, and stormwater will be disposed of to ground through settling ponds.

3.0 DESCRIPTION OF SITE AND LOCATION

[5] The site is described in detail in the Assessment of Effects on the Environment prepared by Survey Waitaki Ltd and this description is adopted for the purposes of this report. In summary, the site is located at 16 Coast Road, Waikouaiti. It is legally described as Lot 1 DP 452251 and is held in Computer Freehold Register 578108. It is located adjacent to the northern boundary of the residential zone at Waitati and has largely been used in the past for small scale farming. It is covered in exotic grasses, and the southern end of the site has had fill placed on it historically. There is no evidence that site has been contaminated by previous activities.

4.0 ACTIVITY STATUS

[6] Dunedin currently has two district plans, being the Operative Dunedin City District Plan (the Operative Plan) and the Proposed Second Generation Dunedin City District Plan (the Proposed Plan). Decisions on the Proposed Plan were released on 7 November 2018 and until such time as the Proposed Plan is made fully operative, both district plans need to be considered in determining the activity status and deciding what aspects of the activity require resource consent. The Objectives and Policies of both Plans also require consideration.

Dunedin City District Plan

The subject site is zoned **Rural** in the Operative Dunedin City District Plan. There are no designations registered against this site. The site is included within the Council's High Class Soils and Indigenous Vegetation and Fauna overlays.

[7] Activities provided for within the Rural zone, and relevant to this area are set out in Rule 6.5.2 of the District Plan, and include:

- Farming activity; and
- Forestry activity;
- Recreational activity;
- Mineral Prospecting and Mineral Exploration; and
- Rural processing activity.

- [8] The Rural Zone description notes that

"As well as primary activities based on livestock, horticulture and forestry, various other activities are associated with the use of the resources of the rural area. These activities include rural processing industries, factory farming, mining, recreation, tourism ventures and horse training and breeding. Rural processing industries include sawmills and dag crushing operations, whereas with respect to factory farming there are a number of piggeries and poultry farms".

- [9] The neighbouring properties to the south are zoned Residential 5.

- [10] Rural Zone Rule 6.5.7(ii) states that any activity not specifically identified as permitted, controlled or discretionary by the rules in the zone or in the rules of Sections 17 to 22 of the Dunedin City District Plan is a **non-complying activity**.

- [11] None of the proposed activities (contractors' yard, building construction yard and retail activity) are considered to be permitted, controlled or discretionary activities. In this respect the following definitions are of relevance.

- [12] The definition of "service activity" within the plan means:

"the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods, the hire of commercial and industrial equipment and machinery, and includes offices and staff facilities which are accessory to the primary activity on the site."

- [13] The definition of "industrial activity" within the plan means

"the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, and includes offices and staff facilities which are ancillary to the primary activity on the site".

- [14] The definition of commercial activity within the plan means

"the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or service and includes any Commercial Office or restaurant, and excludes service stations."

- [15] The activities proposed by the Applicant (contractors yard, building construction yard and retail activity) are considered to fall within the categories of service activity, industrial activity and commercial activity respectively. As none of the activities are provided for as a permitted, controlled or discretionary activity in the Rural Rules therefore the application becomes a **non-complying** activity pursuant to Rule 6.5.7(ii) of the District Plan.

Proposed Second Generation Dunedin City District Plan ("Proposed 2GP")

- [16] The Proposed 2GP was notified on 26 September 2015, and the closing date for submissions on the Plan was 24 November 2015. Decisions on the 2GP were released on 7 November 2018 and as such have legal effect, although they are not Operative at this time.
- [17] The subject site is zoned Rural Coastal in the proposed 2GP. The site is within a Wāhi Tūpuna and a Natural Coastal Character Overlay. Parts of the site are also located within the Hazard 1 – Flood, Hazard 2 – Flood and Hazard 3 – Coastal overlays.
- [18] There are two activity definitions that the proposed contractors' yard may fall under, being 'Rural Contractor and Transport Depots – Large Scale' or 'Industry'. Rural Contractor and Transport Depots – Large Scale are defined as:

Rural contractor and transport depots-large scale – Rural Contractor and transport depots that exceed the people operating on site of Rural contractor and transport depots – small scale.

- [19] Rural Contractor and Transport Depots are in turn defined as

The use of land and buildings as a depot for rural contractor and transport services. For the sake of clarity, this includes the storage, maintenance, repair and refuelling of the vehicles, machinery and other materials associated with these activities as well as the administration and dispatch of workers.

- [20] Rural Contractor and Transport depots are provided for as discretionary activities in the Rural Zone. My interpretation of the definition of a Rural Contractors' yard is that it is a site that supports rural based activities, as opposed to an activity that is simply located in the Rural Zone otherwise there would be no need to distinguish the activity as a 'Rural contractors' yard'. I note that the proposed contractors' yard includes a number of activities, that may not be necessarily associated with rural contractor operations or support activities in the Rural zone but are more general industrial related activities.

- [21] The definition of Industry is

The use of land and buildings for any of the following:

- *Manufacturing, assembly, processing, storage, repair, maintenance, and packing of goods and materials, including machinery or vehicles*
- *Transport facilities including distribution centres, collection points, courier depots and bus depots...*
- *Depots for the storage and dispatch of vehicles, equipment, and/or materials, and the administration and dispatch of workers using these in the field;*

For the sake of clarity, this definition includes:

- *Any ancillary offices and staff facilities*

- [22] Given that the proposed activity provides for services that are not restricted to servicing the rural zone or rural activities, I consider that it best fits within the broader definition of 'Industry', which is a non-complying activity in the Rural Rules and therefore this aspect of the application becomes a **non-complying** activity pursuant to Rule 16.3.3(46) of the Proposed District Plan District Plan. I note that if this determination is found to be incorrect by the Commissioners (and the activity is a discretionary activity), the overall activity status remains a non-complying activity because of bundling of the activities due to the retail activity proposed and the relocatable building construction activity.

- [23] The public sale of bulk landscaping materials is defined as a retail activity which is a non-complying activity in the rural zone and therefore this aspect of the application requires consent as a **non-complying** activity pursuant to Rule 16.3.3(42) of the Proposed District Plan District Plan.

- [24] The builders construction yard is also defined as "industry" which is a non-complying activity in the Rural Zone and therefore this aspect of the application requires consent as a **non-complying** activity pursuant to Rule 16.3.3(46) of the Proposed District Plan District Plan.

- [25] For completeness, I note that several Development Activities associated with the activities, including the construction of a workshop building, storage of hazardous substances, signage, parking, loading and access and other site development activities are subject to a number of associated performance standards, as indicated in Rule 16.3.4. Further, the erection of new buildings and structures greater than 60m² in the NCC overlay zone is a restricted discretionary activity (Rule 16.3.4.4). However, given that the activity is a non-complying activity overall, these individual rules have not been separately identified.

- [26] The earthworks are considered to be Earthworks – Large Scale pursuant to Rule 8A.5.1.2, and therefore a **restricted discretionary activity**, as the area of earthworks exceeds 200m², the maximum permitted for earthworks in a Natural Coastal Area in Rule 8A.5.1.4(iii) and also exceeds the 50m³ limit on earthworks in a Natural Coastal Area in Rule 8A.5.1.5.

Activity Status

- [27] Overall, the application is assessed as a **non-complying** activity.

NES for Assessing and Managing Contaminants in Soil to Protect Human Health

- [28] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent. In this case, the Applicant has identified that there have been no activities undertaken on the land that are listed on the Hazardous Activities and Industries List (HAIL) and that the site is not on the ORC database of potentially contaminated sites. While there will be placement of fill on the site, there is no proposed soil disturbance, and there is no change of use to a more sensitive land use in terms of exposure to contamination. As such, I agree with the Applicant that the NES is not relevant in this case.

5.0 NOTIFICATION AND SUBMISSIONS

- [29] Written affected party approvals were received from the following parties:

Name	Address
Gregory Abbott & Mireka Van Looy	5 Jones Road, Waitati
Gaye Ramsey	4 Evansdale Road, Waitati
Warren and Sarah Hogg	1 King Street, Waitati
David Hardisty	2 King Street, Waitati
Graeme Thomas	3 King Street, Waitati
David Kane & Patricia Bryce	5 King Street, Waitati
Calvin White	6 King Street, Waitati
Brian Miller	10 King Street, Waitati
Paul and Rachel Ashford	6 Coast Road, Waitati
Stephen Wing	67 Coast Road, Waitati
Craig Turnbull (Ratanui Ventures)	69 Coast Road
Leslie Williams	287 Waikouaiti-Waitati Road
Ashley and Vicki Pope	1860 Waikouaiti-Waitati Road
NZ Transport Agency	
Kāti Huirapa Rūnaka ki Puketeraki	

- [30] Effects on these parties cannot be considered pursuant to section 104(3)(a)(ii) of the Act.
- [31] Written approval was not obtained from the following party, after an earlier approval was withdrawn:
- Braestone Ltd – 1870 Waikouaiti-Waitati Road
- [32] As the written approval of all affected parties was not obtained, the application was limited notified to Braestone Ltd on 9 March 2019.

[33] One submission was made by Mr D Parsons on behalf of Braestone Ltd. The submission is summarised below, and a full copy is attached in Appendix 2.

- The submitter operates a consented microbrewery with an open air beer garden.
- Previous experience with managing a garden and landscaping business has made the submitter aware of the nature of effects generated by these activities.
- Loading and unloading of trucks gives rise to dust nuisance.
- Noise associated with trucks, loaders, manufacturing and other equipment will adversely affect the consented activity.
- The proposed activity will destroy the submitters current business activity.
- Consent should be refused, and a change to the zoning of the site should be sought through the Plan Change process.

6.0 ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[34] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in section 3 of the Act as including-

- a) Any positive or adverse effect; and*
- b) Any temporary or permanent effect; and*
- c) Any past, present, or future effect; and*
- d) Any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration or frequency of the effect, and also includes –*
- e) Any potential effect of high probability; and*
- f) Any potential effect of low probability which has a high potential impact.*

[35] Case law has defined that there are three elements to determining a permitted base line for the subject site. They are:

- Existing lawful use of the site
- Activities permitted as of right by the District Plan
- Any existing, but unimplemented resource consent applications for the site.

[36] The assessment of effects is guided by Sections 4 (Sustainability), 6 (Rural Zone), 19.6 (Signs) and 20.6 (Transportation), and 21 Environmental Issues of the Operative District Plan and Sections 2 (Strategic Directions), 6 (Transportation), 8A (Earthworks), 14 (Manawhenua) and 16 (Rural) of the Proposed District Plan. The site is also located within a Natural Coastal Character overlay. Accordingly, assessment is made of the following effects of the proposal:

- Baseline consideration
- Sustainability
- Bulk and Location
- Amenity Values
- Landscape Effects – Natural Coastal Character
- Ecological Effects
- Intensity of Operation
- Transportation
- Infrastructure
- Signage
- Hazards
- Cumulative Effects
- Reverse Sensitivity
- Cultural Effects
- Other matters
- 2GP

Baseline Considerations

- [37] The starting point for the assessment of effects is the environment on the site as it currently exists. Consideration also needs to be given to the future development on the site that is currently authorised or allowed as of right.
- [38] The future environment on the site can include activities permitted by the District Plan. It can also potentially include resource consents that have been granted but not yet implemented. The application of the "permitted baseline test" is at the Committee's discretion and allows the effects of a proposal to be compared to permitted activities that could be carried out on the site without a resource consent (Section 104 etc).
- [39] There are no resource consents held against this site. A range of permitted activities are permitted on the site and provided for in the plan, subject to compliance with the permitted activity conditions. Farm sheds in the Rural zone can be of a similar size, but given the restriction on buildings to 60m² in the NCC, I consider that the permitted baseline is of little relevance to the proposed built form on site. Similarly, small scale rural contracting activities are provided for as permitted activities, but I do not consider this to be a useful comparison given the scale and nature of activities proposed for the site. Given the range and scale of activities proposed on the site I consider that the permitted activities have few effects that are comparable to the proposed activities and I therefore consider that the permitted baseline has no relevance to the application.
- [40] The effects arising from the proposal are considered further below.

Sustainability

- [41] The 'Principal Reasons for Adopting Policies' in the Sustainability section of the Operative District Plan notes that the best means of ensuring that the effects of activities are avoided, remedied or mitigated is to adopt a zoning approach where activities with a similar effect are provided for in a particular area.
- [42] Consent is sought to establish retail and industrial activities on a site zoned for Rural purposes. Presently there is a clear distinction between the Residential 5 zone to the south of the site, and the Rural zone north of the residential area. The proposed activities will blur this distinction by adding a relatively intensive activity onto the site, detracting from the rural character of the site and eroding the distinction between the urban and rural zones, which does not align with the amenity that is anticipated by the plan.
- [43] In this instance, I do not believe that the proposal is aligned with the intent of the Sustainability Section in the District Plan. I note that although the resource consent assessment matters require a consideration of the Sustainability section when assessing the actual and potential effects of a proposal, this consideration is more relevant as a policy assessment.

Effects of Bulk and Location

- [44] Two buildings are proposed, being the small administration building and the larger workshop building which includes staff facilities. Although this has a relatively large footprint (approximately 170m²), I consider that this will not dominate the site given the overall size of the site. The proposed buildings have a low elevation (i.e. a maximum of 3.9m high), and I do not consider that these will have any significant effect on the surrounding properties or wider area. I note in particular that all but one adjoining property owners have provided written approval, and the submission appears to be concerned more with the activity than the physical structures.
- [45] I note that the NZTA has provided approval in respect of effects on traffic safety, which also indicates that they do not consider the buildings or associated traffic movements will give rise to any effects on traffic safety. Given the angle at which the site itself may be viewed by users of the highway, the short distance over which the site may be visible and the speed of passing vehicles, I do not consider that the

proposed buildings will give rise to any adverse visual effects when viewed from the State highway or surrounding roads. Overall, I consider that there will be no significant adverse effects arising from the proposed buildings.

Effects on Amenity Values (Assessment matter 10.8.5)

- [46] The principal amenity effects arising from the proposal relate to noise associated with operations, dust generation and lighting. The properties to the south of the site are zoned Residential, with a higher amenity expectation than the rural zone. It is noted, however, that written approval has been obtained from the adjoining residential properties, with the exception of the property to the west of the site, occupied by Braestone Ltd. That notwithstanding, I consider that amenity is a broader concept than just that experienced by immediate neighbours.
- [48] The proposal has been assessed by the Council's Environmental Health officer, who overall has not raised any significant matters. Specifically, the assessment of the Environmental Health Officer notes that:
- Lighting installed on the site should be located to avoid shining or deflecting light directly onto adjoining or surrounding properties. This echoes the view of Mr Christos, the Council's Urban Designer.
 - Dust is unlikely to be an issue as the site is to be filled in a northerly direction, away from adjoining properties. The applicant nonetheless has a general duty to avoid adverse effects, and any significant dust issues will likely require addressing by the Otago Regional Council. Should consent be granted, a Site Management Plan should be required a condition of consent and should include dust management and suppression techniques that can be employed if required.
- [49] With respect to noise, the Environmental Health Officer has identified that the hours of operation sought by the Applicant may require some adjustment to comply with the noise limits in the District Plan. Consent has not been sought to breach the noise limits, and I consider therefore that the requested hours of 6am to 8 pm should be amended to 7am to 7pm to be consistent with the Plan's daytime period, and to avoid potential breaches of the night time limit.
- [50] Overall, I accept the advice of the Environmental Health Officer. I consider that conditions relating to lighting can be imposed should consent be granted to avoid adverse glare on adjoining properties, and consider that subject to conditions addressing the above points, any amenity effects will be no more than minor.
- [51] I note that Braestone Ltd are concerned with potential noise effects arising from daily operations at the site, including from vehicles. The site plan identifies that there will be truck parking adjacent to the north-western boundary, with boundary planting between the parking and the boundary with the Braestone Ltd site. There will also be bunding created which will also assist in reducing noise outside the site. Consent has not been sought to breach the noise limits in the Plan, and the Environmental Health Officer has not identified that any noise effects will be significant. While I consider that there will be noise effects experienced on the adjacent site, I consider that these will be minor.

Natural Coastal Character Effects

- [52] The Applicant's AEE addresses landscape matters in relation to the Natural Coastal Character overlay in paragraphs 89 – 100. Guidance in the Plan identifies that the effects to be considered relate largely to earthworks and the design and appearance of structures with the intention of not detracting from the natural character of the area.
- [53] The site is covered in exotic grasses, and has been modified historically by earthworks. Although it forms a part of a small rural area adjacent to Blueskin Bay, it is separated from the coastal marine area by the rail corridor. To the extent that any natural character remains, I agree with the applicant that given the low lying nature of the site and its limited visibility, there will not be significant adverse effects on coastal landscape values. The design and appearance of the buildings will not give rise to

adverse visual effects, and the screening provided by the bund and landscaping will assist in integrating the proposal into the surrounding area.

Ecological Effects

- [54] As identified on page 29 (para 101) of the Applicant's AEE, the site is sown in exotic grasses and there are no indigenous vegetation species present. The site has been modified over time, and I agree with the Applicant's assessment that the proposed native planting around the perimeter of the site will result in positive effects, including by providing additional habitat and migration options for native and other species.

Intensity of Operation

- [55] Locating industrial and retail activities adjacent to residential activities can give rise to adverse effects, particularly in relation to noise and vehicle movement associated with the activity. Both matters are addressed elsewhere in this report. The proposed activity will be relatively intensive, with consent sought for operating hours between 6am and 8pm Monday to Saturday. In this application, written approval has been obtained from adjoining property owners and from the operator of the State Highway network, except for the site owned by Braestone Ltd on the basis that their amenity and therefore their business will be adversely affected.
- [56] Apart from effects on the Braestone property, adverse effects on the parties who have provided written approval must be disregarded.
- [57] The matters raised in the submission relate to amenity issues, including dust, noise and general disruption to the consented activity on the submitter's property. The submitter's property is adjacent to the subject site's western boundary. The closest activity to the site will be truck parking, as shown on the Applicant's landscaping plan.
- [58] The microbrewery on the Braestone site operates under a resource consent that allows the activity to operate from 7am to midnight, 7 days per week, including an outdoor garden bar area. Activities on the Applicant's site will likely be noticeable, particularly given the overlap in operating times. The Environmental Health Officer has not identified any significant adverse effects, including any related to noise or dust, on adjoining properties. The permitted baseline in the rural zone includes a range of activities, including machinery and vehicles associated with various activities. I also note that the Braestone site is located immediately adjacent to State Highway 1 and as such will experience frequent vehicle noise.
- [59] Concern has been raised at the various noise sources proposed for the site, including vehicles, machinery and construction, but as identified above, consent has not been sought to breach the noise restrictions for the Zone, and therefore as proposed I do not consider that the noise effects will be more than minor. Should consent be granted, a review condition would be appropriate to enable the Council to review conditions relating to noise in the event that the proximity of the truck parking to the boundary, or other noise effects, were more than anticipated or predicted.

Transportation

- [60] The application has been assessed by the Council's Transportation Planner, Mr Grant Fisher. He has noted that Waikouaiti-Waitati Road (State Highway 1) is classified as a National Road (Limited Access) under the District Plan's Roading Hierarchy, and as a Strategic Road in the 2GP's Road Classification Hierarchy. The NZTA is the Road Controlling Authority (RCA) for Waikouaiti-Waitati Road. King Street is classified as a Local Road under both District Plans.
- [61] In assessing the Transport related effects of the proposal I note that the NZ Transport Agency has provided written approval in respect of actual and potential effects on the State Highway, and accordingly effects on the highway cannot be considered pursuant to section 104(3)(a)(ii) of the Act. This assessment therefore focuses on effects on King Street.

- [62] Mr Fisher has assessed the proposed new access from King Street. The proposed vehicle crossing will be located approximately 40.0m from the State Highway 1/King Street Intersection and Mr Fisher advises this section of road requires upgrades which are detailed below.
- [63] Mr Fisher has also advised that the access must be a maximum 9.0m formed width, hard surfaced for from the edge of the seal of King Street, to a distance of not less than 5.0m inside the property boundary, and be adequately drained for its duration. The vehicle crossing must be constructed to DCC Transport's industrial specification.
- [64] Mr Fisher has not raised any other matters in relation to the proposed access and I therefore consider, subject to the access being constructed in accordance with the Council standard, that there will be no more than minor effects associated with the new access.
- [65] The applicant proposes to provide 10 onside car parks and 7 truck/plant parks, with a further 3 parks allocated to the Mopanui building activity. The site is large and additional parking can be provided if necessary. Mr Fisher has confirmed that the Transportation section considers the onsite parking provision acceptable, and similarly that there is sufficient space available on site for manoeuvring.
- [66] With respect to traffic generation, Mr Fisher's report concludes that there will be no significant adverse effects and notes that:
- According to the DCC RAMM database, King Street has an estimated ADT of approximately 70 vehicles, with 1.11% of these being heavy vehicles. The proposed activity will generate additional traffic to approximately the first 40.0m of King Street. The scale of this traffic will vary, but will include B-Trains, loaders, forklifts and standard motorcars.
 - The applicant anticipates approximately 1100 truckloads (8-10 truckloads per day) of fill will be required to complete the preparation of the site, which will be undertaken in 2 two stages over a 6-month period. It is advised that the applicant will require a traffic management plan (TMP), prepared by a suitably qualified person, if the proposed works affect the normal operating hours of the transportation network. The TMP will need to be approved by DCC Transport, prior to any works commencing.
- [67] I accept Mr Fisher's advice with respect to traffic generation.
- [68] Mr Fisher's advice also addresses the formation of King Street. Presently it is described as a low-volume Local Road, comprising a narrow, metalled formation. According to the DCC RAMM Database, King Street currently serves 70 ADT, and is currently approximately 4.0m wide, and therefore does not adequately accommodate for two-way traffic. Transport considers King Street to have a substandard formation to serve the proposed industrial activity, given that the road will be required to serve heavy vehicles and a general increase of daily traffic.
- [69] Further, Mr Fisher noted that Cargill Contracting Ltd employs 20 staff, which may all be required to enter the site each morning for team meetings. The staff arrivals/departures are anticipated to vary, depending on the work type and location i.e. some staff may go directly to their place of work, bypassing the need to access the site. However, the Transport department considers it appropriate to provide for the 'worst case scenario', thereby anticipating 20 staff arriving/departing on a daily basis, as well as traffic using the site as part of the retail activity.
- [70] Notably, while the proposed activity would generally require the road to be constructed to a 9.5m wide carriageway (an industrial standard as per the DCC Code of Subdivision and Development 2010), Mr Fisher has advised that in this case it would be appropriate for the road to be constructed instead to a residential standard, thereby having a 6.0m carriageway because the length of the road to be upgraded is relatively short, comprising approximately 45.0m. Transport considers that if the road is constructed to a residential standard in terms of its geometric design, the adverse effects of the proposed industrial activity on the surrounding transport network will be

sufficiently mitigated. I accept this advice, and note that should consent be granted, a number of conditions have been recommended by Mr Fisher to ensure that the access and roadway are upgraded in accordance with the Council's standards.

[71] Overall, the Transportation Department considers the proposal to have no more than minor adverse effect on the transportation network, subject to the recommended conditions and advice notes. I have read and concur with the Transportation Planner's assessment.

[72] With respect to transportation matters it is also noted that the applicant proposes to access the site over a small strip of land held in Deeds Index R317. The Applicant has identified that the land is abandoned, and that they are seeking to resolve the issue. Until the ownership of the area is settled, the Applicant has no legal right of access over this piece of land. Should consent be granted, therefore, it would need to be subject to a restriction under section 116 of the Act that the consent not be given effect to until such time as legal access is obtained over this parcel.

Access to Infrastructure

[73] The proposed infrastructure supporting the development on the site have been assessed by the Council's 3 Waters Policy Analyst. Their assessment has noted that:

- The proposed activity is located within the Warrington Water Supply Area which is a low-pressure, restricted flow supply. New connections and allocation of new water units is at the discretion of the Council and depends upon the capacity in the network, and a separate application will be required.
- The new connection will have a restrictor installed in the manifold box. The storage tank must have an air gap for backflow prevention and meet the New Zealand Industry Standard Field testing of backflow prevention devices and verification of air gaps NZ backflow testing standard 2011.
- The tank will be required to have capacity of at least 2 days storage (2m³-5m³).
- Only part of the Warrington Water Supply Area incorporates fire-fighting capability. Where a property is located beyond the area with fire-fighting capability, it is strongly recommended that water storage facilities also comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS 4509).
- All aspects relating to the availability of the water for firefighting should be in accordance with SNZ PAS 4509:2008, being the Fire Service Code of Practice for Fire Fighting Water Supplies.
- There are no stormwater infrastructure or kerb and channel discharge points in the Rural zone. Disposal of stormwater is therefore to water tables and/or watercourses onsite, or to suitably designed onsite soak-away infiltration system or rainwater harvesting system. Stormwater is not to cause a nuisance to neighbouring properties or cause any downstream effects.
- To allow adequate pervious area for natural stormwater drainage, the maximum site coverage specified in the District Plan must be complied with.
- Effluent shall be disposed of a septic tank and effluent disposal system that is to be designed by an approved septic tank and effluent disposal system designer.

[74] Overall, the 3 Waters Policy Analyst has not raised any significant issues that cannot be otherwise dealt with by way of conditions of consent. On the basis of this advice I consider that there will be no more than minor effects associated with the provision of the relevant services to the site. Should consent be granted, then the conditions recommended by the 3 Waters Policy Analyst should be included.

Signage

- [75] The application includes a sign at the entrance to the site fronting King Street, which will read: "Cargill Contracting Ltd" and "Mopanui Studio Homes". The free-standing sign has an area of 4.5m², being 3.0m wide and 1.5m deep, and will be located entirely within the site boundaries. It will stand on a 6m pole.
- [76] The sign exceeds the size limit in the 2GP Rules, which limit signs to a maximum height of 2.0m, 1.0m² per display face and 1.0m maximum width (2m²), and it is the effects of the difference in size that are considered in this assessment.
- [77] From a Transportation perspective, Mr Fisher anticipates no traffic safety concerns associated with the sign, due to the low volume use of King Street. Further, the sign will depict the names of the business operating within the site only, and will not mimic regulatory road signage. The Council's Urban Designer, Mr Christos, has identified that given the size of the sign it could be considered to be 'at odds' with the surrounding landscape. In order to ensure that it is appropriately located, the final design and location should be required to be provided to the Council for certification prior to its erection.
- [78] Given the location of the sign on King Street, and the low volume of traffic that uses the road, I accept the advice of Mr Fisher regarding traffic safety. With respect to the view of Mr Christos, I note that the sign will generally be viewed by users of King Street or residents in the immediate vicinity, and given the overall size of the site and scale of the proposed activity, will not be dominant. These parties have provided written approval. I also consider that any visibility of the sign from the State highway will be limited, given the angle at which it will be viewed and the small size of the sign. That notwithstanding, I also note that the NZ Transport Agency has provided written approval to the proposal, excluding effects on the Ste Highway from consideration pursuant to section 104(3)(a)(ii) of the Act.
- [79] Overall, I consider that there will be no more than minor adverse effects arising from the proposed sign.

Hazards/Earthworks

- [80] The application has been reviewed by Stantec on behalf of the Council, who have considered the application and the potential effects arising from natural hazards. The review notes that:
- The site is subject to shaking and liquefaction risks (Hazards 10111 and 11407 respectively);
 - The site is subject to hazard 1016, relating to alluvial fan flooding.
- [81] Stantec have noted that the earthworks are significant and may change overland flow paths within the site. However, overall it is noted that the proposal will not create or exacerbate instability on the site or adjoining properties. Stantec have recommended a number of conditions that should be imposed should the consent be granted, including amending the batter slope of the bund to 2V:1H, and that appropriate engineering design be provided for the cut and fill as well as stormwater management for the site.
- [82] I accept Stantec's advice and consider that there will be no adverse effects that are more than minor arising from natural hazards.

Cultural Effects

- [83] The site is located within a Wāhi Tūpuna area, identified as A4.14 *Purakaunui to Hikarora to Huriawa* in the Second Generation Plan. Kāti Huirapa Rūnaka ki Puketeraki have identified that this is a significant area, as there are sites of Māori settlement and activity in the area including Pa Tawhito, Kaika, Urupa, Wāhi tohu, Mahika kai, Mahika Taoka and archaeological remains present. Written approval has been provided by the Rūnaka, who have noted that although there are no recorded Māori archaeological sites within the boundaries of the proposed contractor's yard, the area was an important pathway and source of mahika kai (food and resource gathering) and there is the potential to disturb unrecorded sites during any earthworks for the proposed activity.

- [84] A number of conditions have been proposed by the Rūnaka to manage any potential effects on Carey's Creek and to impose an appropriate accidental discovery protocol on any consent granted. On the basis that the Rūnaka have provided written approval, I consider that there are no adverse cultural effects or effects on the Wāhi Tupuna overlay that are more than minor.

Cumulative effects

- [85] The concept of cumulative effects, as defined in *Dye v Auckland Regional Council & Rodney District Council* [2001] NZRMA 513, is:

"... one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration".

- [86] Similarly, some effects may not presently seem an issue, but after having continued over time those effects may have significant impact on the environment. In both of these scenarios, the effects can be considered to be 'cumulative'.
- [87] The establishment of industrial and commercial activities outside of those zones specifically identified for that type of activity can potentially erode the values associated with those zones and the framework of the Plan. However, I acknowledge that this effect is difficult to assess and attribute to one development in particular. I also note that there are few, if any, non-residential or non-rural activities in the vicinity with the exception of the Braestone complex immediately adjacent to the site, and overall I do not consider that this particular application gives rise to an adverse cumulative effect.

Reverse Sensitivity

- [88] 'Reverse sensitivity' relates to the situation whereby the introduction of activities with sensitivity to existing and permitted operators in an area results in the new activities seeking to impose restrictions upon the established activities. In this case I consider it unlikely that the commercial or industrial operations proposed would seek or require changes to the established activities surrounding the site.

Summary of Effects

- [89] Overall, having considered the actual and potential effects of the proposal, I consider that with appropriate conditions in place there will be no adverse effects that are more than minor. I therefore consider that the proposal satisfies the first threshold test of section 104(1)(a) of the Act.

7.0 OBJECTIVES AND POLICIES ASSESSMENT

- [90] Section 104(1)(b)(iv), the second limb of the non-complying activity test, requires that the application will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan. In the assessment below, I assess proposal against the relevant provisions of the plan and identify whether, in my view, it is contrary to them. I also identify where I consider the application may be consistent with the provisions, but not to the extent it can be determined to be contrary,

7.1 Assessment of Objectives and Policies of the Operative District Plan

- [91] The following objectives and policies of the Operative Dunedin City District Plan are considered to be relevant to this application:

Objective/Policy	Assessment
Sustainability Section	
Objective 4.2.1 Enhance the amenity values of Dunedin.	The primary tool that the Council uses to manage the amenity values of Dunedin is the zoning

Policy 4.3.1 Maintain and enhance amenity values.	framework of the Plan, which essentially provides for the aggregation of activities with similar effect into common areas, such as industrial zones or residential zones. One factor in amenity is the distinction between the zones, as the mixing of activities can have any adverse effects on the overall amenity expectations within each zone and the City as a whole. Although overall the proposal has been determined above to have adverse effects that are no more than minor, I note in terms of these provisions that the proposal will result in the 'blurring' of the distinction between the residential and rural zones by introducing activities that are not provided for in the zone. The proposal will not enhance the anticipated amenity of the rural zone, and while I therefore consider that the proposal is inconsistent with the intended direction of these provisions, it is not contrary to them.
Objective 4.2.3 Sustainably manage infrastructure	On site stormwater and waste water disposal is proposed, and a connection is to be sought to the Warrington Water Scheme. The proposed services are appropriate for the site and any effects on infrastructure and can be managed so that they are no more than minor. The proposal is not contrary to these provisions.
Policy 4.3.5 Require the provision of infrastructure services at an appropriate standard.	
Objective 4.2.5 Provide a comprehensive planning framework to manage the effects of use and development of resources.	This Policy is a structural policy that indicates how the Council will manage the effects of the use and development of resources in the District. As mentioned above, the planning framework revolves around the use of zoning. While I consider that the proposal is inconsistent with the planning framework of the Plan, as it seeks to establish retail and industrial activities into the Rural zone that are not within the scope of activities permitted in the zone, it is not contrary to them on the basis that the structure of the Plan allows for applications to be made for non-complying activities.
Policy 4.3.7 Use zoning to provide for uses and developments which are compatible within identified areas.	I consider that the development is inconsistent with the intent of these provisions, but not to the extent it can be determined to be contrary. Retail and industrial activities are generally not considered to be compatible land uses in the Rural Zone, as is shown through the non-complying activity status in the District Plan. The introduction of retail into the industrial area could be seen as the mixing of incompatible land uses and developments.
Policy 4.3.8 Avoid the indiscriminate mixing of incompatible uses and developments.	
Policy 4.3.10 Adopt an holistic approach in assessing the effects of the use and development of natural and physical resources.	
Rural Section	
Objective 6.2.2 Maintain and enhance the amenity values associated with the character of the rural area.	The proposal will introduce industrial and retail activities to the site, and will modify the site such that manmade features will be dominant on the site and blur the distinction between the rural and urban zones. The site will not exhibit characteristics associated with rural amenity, and as such I consider the proposal contrary to this provision.

Objective 6.2.4 Ensure that development in the rural area takes place in a way which provides for the sustainable management of roading and other public infrastructure.	No adverse effects relating to infrastructure or roading have been identified. The proposal is not contrary to this Policy.
Objective 6.2.5 Avoid or minimise conflict between different land use activities in rural areas.	The proposed activities will not conflict with other activities in the rural zone. On this basis I consider the proposal is not contrary to this provision.
Policy 6.3.1 Provide for activities based on the productive use of rural land.	The proposal is not based on the productive use of rural land, although it is noted that the site presently does not support productive rural activity. The proposal is not contrary this provision.
Policy 6.3.2 Sustain the productive capacity of the Rural Zone by controlling the adverse effects of activities.	The productive capacity of this site will be reduced by the proposed activity, but in the overall context of the Rural zone the reduction will be minor and while I consider the proposal to be inconsistent with this provision, it is not contrary to it.
Policy 6.3.6 Avoid, remedy or mitigate the adverse effects of buildings, structures and vegetation on the amenity of adjoining properties.	The proposed buildings are appropriately located such that residential activities on the adjoining zone are not affected. As such the proposal is not contrary to this policy.
Policy 6.3.8 Ensure development in the Rural and Rural Residential zones promotes the sustainable management of public services and infrastructure and the safety and efficiency of the roading network.	No adverse effects relating to infrastructure or roading have been identified. The proposal is not contrary to this Policy.
Policy 6.3.10 Protect areas that contain 'high class soils', as shown on District Plan Maps 75, 76 and 77, in a way which sustains the productive capacity of the land.	Although High Class Soils are shown over some of the property, they will not be affected by the proposal as no works are to be undertaken on areas where the soils are present. The proposal is therefore not contrary to this policy.
Policy 6.3.11 Provide for the establishment of activities that are appropriate in the Rural Zone if their adverse effects can be avoided, remedied or mitigated.	The explanation to the Policies identifies activities that are appropriate in the rural zone as including activities that are dependent on the rural zone, such as tourism or recreation, or factory farming or activities reliant on the mineral resources of the zone. As identified in the assessment of effects, I consider that the proposal is industrial in nature as it neither services or is reliant on the resources of the rural zone. On the basis that retail and industrial activities are not considered appropriate for the rural zone, I consider that the proposal is contrary to this provision.
Policy 6.3.12 Avoid or minimise conflict between differing land uses which may adversely affect rural amenity, the ability of rural land to be used for productive purposes, or the viability of productive rural activities.	The proposal will not conflict with the adjoining properties on the basis that they have provided written approval. The proposal will reduce the ability of the site to be used for productive purposes or other productive rural activities. While I consider the proposal is inconsistent with this provision, overall it is not contrary.

Transportation Section	
Objective 20.2.2 Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	The Council’s Transportation department has assessed the application and determined that the effects of the proposal on the traffic network will be no more than minor and in this regard the proposal is not contrary to these objectives and policies.
Objective 20.2.4 Maintain and enhance a safe, efficient and effective transportation network.	
Policy 20.3.4 Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	
Policy 20.3.5 Ensure safe standards for vehicle access.	
Policy 20.3.8 Provide for the safe interaction of pedestrians and vehicles.	
Environmental Issues Section	
Objective 21.2.2 Ensure that noise associated with the development of resources and the carrying out of activities does not affected public health and amenity values.	Effects relating to noise and glare can be managed through conditions of consent and the proposal therefore is not contrary to these provisions.
Policy 21.3.3 Protect people and communities from noise and glare which could impact upon health, safety and amenity.	
Signs section	
Objective 19.2.1 Avoid, remedy or mitigate the adverse effects of signs on amenity values.	Overall it is considered that the proposed sign will not give rise to any significant adverse effects, and the proposal is not contrary to these provisions.
Objective 19.2.2 Ensure that signs do not adversely affect the safe and efficient functioning of the road network.	
Objective 19.2.4 Promote the efficient use of signs by managing the adverse effects of visual clutter.	
Policy 19.3.1 Ensure that signs do not detract from the amenity values of the area in which they are located and the amenity values of areas from where they are visible.	
Policy 19.3.2 Control the design, location, size and number of signs erected at any given location to avoid, remedy or mitigate any adverse effects.	
Policy 19.3.4 Promote simplicity and clarity in the form of the sign and the message the sign conveys.	

- [92] The key objectives and policies to consider when assessing this application relate to the Sustainability section and the Rural section of the District Plan. The proposal is considered to be generally **contrary** to key provisions of these sections.
- [93] An assessment against the Environmental, Signs and Transportation sections of the Plan are, however, considered to be **not contrary** to the relevant objectives and policies.
- [94] Overall, I consider that the proposal has little support from the key objectives and policies of the Operative District Plan which relate to the purpose of the zone, and therefore consider that it is contrary to the objectives and policies of the Operative District Plan.

7.2 Assessment of Objectives and Policies of the Proposed District Plan

Rural Strategic directions, objectives and policies

Objective/policy	Assessment
Objective 2.3.1: Land and facilities important for economic productivity and social well-being Land and facilities that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land are: a. protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity...	The site is not considered to be productive land, and is not important for the matters raised in this Objective. While the proposal is inconsistent with the intent of protecting rural land from competing uses, overall the proposal is not contrary to this provision.
Policy 2.3.1.2 Maintain or enhance the productivity of farming and other activities that support the rural economy through: b rules that provide for rural industry and other activities that support the rural economy... h. rules that restrict commercial and community activities in the rural zones to those activities that need a rural location or support rural activities.	The proposal is for retail and industrial activities that do not need a rural location or that support rural activities. The proposal is therefore considered contrary to this provision.
Objective 16.2.1 Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment. Residential activity in rural zones is limited to that which directly supports farming or which is associated with papakāika.	It is considered that the proposal is contrary to this objective. The proposed activities are not productive rural activities and are not necessarily most appropriately located in a rural environment.
Policy 16.2.1.3 Provide for rural activities, veterinary services, rural industry, rural contractor and transport depots, community activities, emergency services,	I do not consider this Policy to be relevant. As identified I consider the activities to be Industry and Retail activities.

cemeteries and crematoriums in the rural zones where the effects will be adequately managed in line with objectives 16.2.2 and 16.2.3, 16.2.4 and their policies, and the objectives and policies of any relevant overlay zones	
Policy 16.2.1.8 Avoid supported living facilities, commercial activities, industrial activities, and major facility activities, unless otherwise provided for, in the rural zones.	The proposal seeks to establish retail and industrial activities in the Rural Zone. This is a strongly worded policy seeking to avoid such activities and the proposal is therefore considered to be contrary to the Policy.
Objective 16.2.2 The potential for conflict between activities within the rural zones, and between activities within the rural zones and adjoining residential zones, is minimised through measures that ensure: - the potential for reverse sensitivity in the rural zones is minimised; - the residential character and amenity of adjoining residential zones is maintained; and - a reasonable level of amenity for residential activities in the rural zones.	The proposal will not give rise to reverse sensitivity effects, and will not alter the residential character of the adjoining zones. Management of activity on the site can manage potential adverse effects such as noise. While the location of an industrial activity adjacent to a residential area is discouraged by the Plan, in this instance the actual effects on the adjoining properties have been addressed. Locating the proposed activities on the site will blur the distinction between the urban and rural zones, I consider overall that the proposal not contrary to this provision.
Policy 16.2.2.3 Require all new buildings to be located an adequate distance from site boundaries to ensure a good level of amenity for residential activities on adjoining sites.	The proposed buildings are appropriately located such that residential activities on the adjoining zone are not affected. As such the proposal is not contrary to this policy.
Policy 16.2.2.5 Only allow rural tourism - large scale, rural research - large scale (outside the Invermay Farm mapped area), rural contractor and transport depots - large scale, community and leisure - large scale, sport and recreation, veterinary services, visitor accommodation, cemeteries, crematoriums, intensive farming, domestic animal boarding and breeding (including dogs), rural industry, mining, service stations, or landfills where adverse effects on the amenity of residential activities on surrounding properties will be avoided or, if avoidance is not practicable, adequately mitigated	I do not consider these Policies to be relevant. As identified I consider the activities to be Industry and Retail activities.
Policy 16.2.3.5 Only allow intensive farming, rural tourism - large scale, rural industry, rural research - large scale (outside the Invermay Farm mapped area), rural contractor and transport depots - large scale, mining and landfills where adverse effects from large scale development on rural character and visual amenity will be avoided or minimised as far as	

practicable.	
Objective 16.2.3 The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a. a predominance of natural features over human made features; b. a high ratio of open space, low levels of artificial light, and a low density of buildings and structures; c. buildings that are rural in nature, scale and design, such as barns and sheds; d. a low density of residential activity, which is associated with rural activities; e. a high proportion of land containing farmed animals, pasture, crops, and forestry; f. extensive areas of indigenous vegetation and habitats for indigenous fauna; and g. other elements as described in the character descriptions of each rural zone located in Appendix A7.	The proposal will introduce industrial and retail activities to the site, and will modify the site such that manmade features will be dominant on the site. The site will not exhibit characteristics associated with rural amenity, and to this extent I consider the proposal contrary to this provision.
Policy 16.2.3.1 Require buildings and structures to be set back from site boundaries and of a height that maintains the rural character values and visual amenity of the rural zones.	The buildings have a maximum height of 3.9m and are appropriately setback from boundaries. The proposal is not contrary to this policy.
Objective 16.2.4 The productivity of rural activities in the rural zones is maintained or enhanced.	The proposal with neither maintain nor enhance the productivity of rural activities in the rural zone. The proposal will utilise rural land for retail and industrial purposes. On the basis that the site is not presently used for productive purposes, I consider the proposal to be inconsistent with this provision, but overall consider it is not contrary.
Policy 16.2.4.1 Require earthworks in a high class soils mapped area to retain soils on the site.	Although High Class Soils are shown over some of the property, they will not be affected by the proposal as the works avoid the areas where they are present. The proposal is therefore not contrary to this policy.
Policy 16.2.4.2 Only allow activities other than farming on highly productive land where: the scale, size and nature of the activity means that any loss of current or potential future rural productivity would be: insignificant in any high class soils mapped area; and no more than minor in other areas of highly productive land; ...	The site is not identified as highly productive land, apart from areas of high class soils which will not be affected by the proposal. The proposal is therefore not contrary to this provision.

Natural environment objectives and policies

Objective/policy number	Objective/policy text
Objective 10.2.3 Areas of outstanding natural coastal character (ONCC), high natural coastal character (HNCC), and natural coastal character (NCC) are protected from inappropriate use and development and their values, as identified in Appendix A5, are preserved or enhanced.	The site is located within the NCC A5.3.3. The proposal will not give rise to any adverse effects on the characteristics of this NCC, which are more specific than the rural values identified in Objective 16.2.3 and is therefore not contrary to this Objective.
Policy 10.2.3.5 Only allow mining, landfills, crematoriums, large buildings and structures, forestry, earthworks - large scale and indigenous vegetation clearance - large scale in the Natural Coastal Character Overlay Zone (NCC) where adverse effects on the natural character values identified in Appendix A5 will be avoided or, if avoidance is not practicable, no more than minor.	No adverse effects have been identified arising from the proposed earthworks and I consider overall that the proposal is not contrary to this provision.
Policy 10.2.3.9 Require buildings and structures in a Natural Coastal Character Overlay Zone (NCC) to have exterior colours and materials that avoid or minimise, as far as practicable, adverse visual effects caused by reflectivity.	There will be no reflectivity effects arising from the proposal. The building is to be clad in an appropriately recessive colour steel and the proposal is therefore not contrary to this provision.
Policy 10.2.3.10 Provide for small buildings (no larger than 60m ²) in the Natural Coastal Character Overlay Zone (NCC) but limit the number of these clustered together with each other or existing large buildings to a level that avoids or, if avoidance is not practicable, ensures cumulative visual effects are no more than minor	Consent is sought for a large building (some 170m ² in area). No adverse effects have been identified in respect of the buildings. Given the direction of the policy to restrict structures to a small area in the NCC overlay, while I consider the proposal to be inconsistent with this provision, overall I consider it is not contrary to it.
Policy 10.2.3.11 Require ancillary signs in coastal character overlay zones to be located and designed so that any adverse effects on natural character values, as identified in Appendix A5, are insignificant.	The proposal is not contrary to this policy. The sign will not have any adverse effects on natural character values.

Natural Hazards objectives and policies

Objective/policy	Consideration
Objective 11.2.1 Land use and development is located and designed in a way that ensures that the risk from natural hazards, including climate change, is no more than low, in the short to long term.	The actual and potential effects of the activity in relation to natural hazards have been addressed by Stantec, who have advised that subject to appropriate conditions, the proposal can proceed and not give rise to, or be subject to, any adverse effects that are more than minor. The proposal is therefore not contrary to the Hazards provisions.
Policy 11.2.1.4 In the hazard 1, hazard 1A and 2 (flood) overlay zones, only allow new buildings, and additions and alterations	

to buildings, where the scale, location and design of the building or other factors mean risk is avoided, or is no more than low.	
Policy 11.2.1.6 In the Hazard 2 (flood) Overlay Zone, only allow natural hazards sensitive activities and natural hazards potentially sensitive activities where: a. the activity has a critical operational need to locate within the Hazard 2 (flood) Overlay Zone and risk is minimised as far as practicable; or b. the scale, location and design of the activity or other factors means risk is avoided, or is no more than low.	
Policy 11.2.1.7 Only allow large quantities of hazardous substances in Hazard 1, Hazard 1A and 2 overlay zones where they are stored in a manner that ensures risk from natural hazards is avoided, or is no more than low	
Policy 11.2.1.14 Require buildings, structures, storage and use of hazardous substances, network utility activities, and earthworks - large scale to be set back an adequate distance from water bodies to ensure that the risk from natural hazards, including from erosion and flooding, is avoided, or is no more than low.	

Manawhenua objectives and policies

Objective/policy n	Assessment
Objective 14.2.1 The relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with: a. wāhi tūpuna; b. mahika kai; and c. occupation of original native reserve land through papakāika.	As identified in the Assessment of Effects, written approval has been provided from Manawhenua. The proposal is not contrary to these provisions.
Policy 14.2.1.4 Only allow activities that are identified as a threat to wāhi tūpuna in Appendix A4, where	

adverse effects on the relationship between Manawhenua and the wāhi tūpuna are avoided, or if avoidance is not practicable, are no more than minor	
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- [95] Overall, while the proposal is not contrary to many of the provisions, such as those relating to Manawhenua and Hazards, I consider that it is contrary to key policies relating to the Rural zone in particular.
- [96] Decisions have been released on the 2GP, and the appeal period ended on 19 December 2018. The parts of the Plan that are subject to appeal are presently being confirmed by the Council, and once identified, a determination can be made as to what parts of the Plan can be considered to be operative. My initial review has not identified any appeals on Policy 16.2.1.8 in particular, although there are appeals that relate to the Rural zone. Further detail will be sought from the Council policy team in relation to the matters covered by appeals and an update provided at the hearing. For the time being, the provisions of the 2GP do have legal effect, and the Commissioners must determine the weighting to be given to the provision of the 2GP and the Operative Plan.
- [97] In this case, it is my view that the Rural provisions of the Proposed 2GP are consistent with the Operative Plan and solidify the approach that has been taken to activities that are not provided for rather than change approach. Given there is little difference between the Plans, I consider that the matter of weighting is less significant than it would be had the 2GP introduced a more permissive approach.
- [98] On the basis that the Policies of the Proposed Plan are consistent with the approach taken in the Operative Plan, I consider that weight should be given to the Proposed Plan.

Assessment of Regional Policy Statements (section 104(1)(b)(iii))

Operative Regional Policy Statement

- [99] Section 104(1)(b)(iii) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago was made operative in October 1998, and parts of the Proposed Regional Policy Statement were made operative in late 2018. Given their overarching regional focus, neither the Operative nor Proposed the Regional Policy Statement have a great bearing on the current application and I do not consider the proposal to be contrary to their provisions.

DECISION MAKING FRAMEWORK

Part 2 Matters

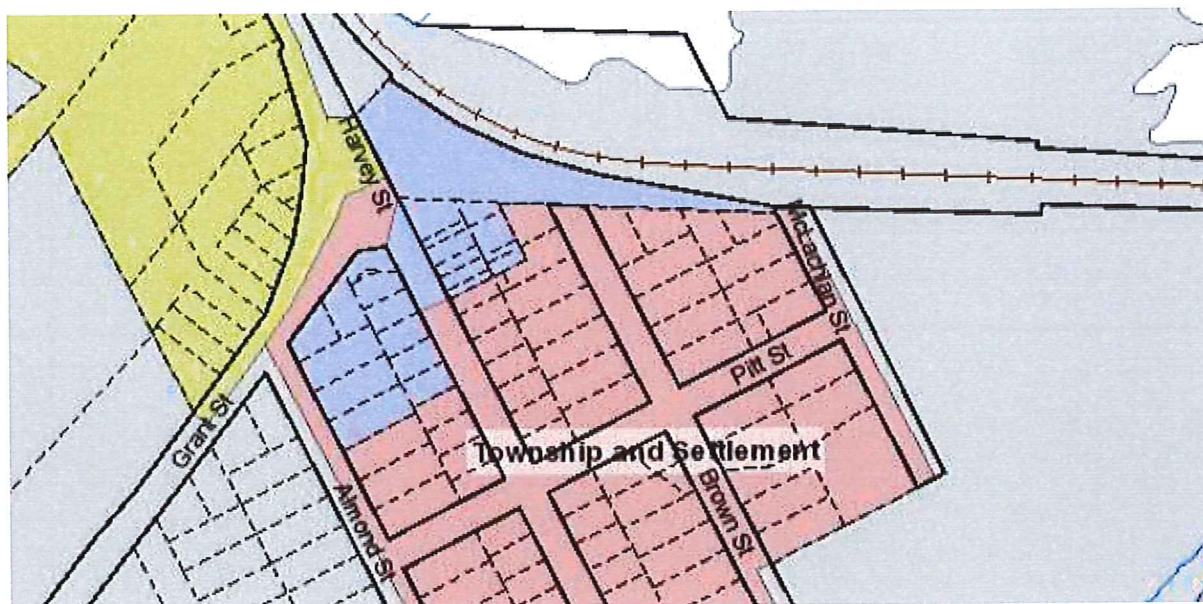
- [100] When considering an application for resource consent, an assessment of the proposal is to be made subject to the matters outlined in Part 2 of the Act. This has been confirmed in the recent Court of Appeal decision (*RJ Davidson Family Trust v Marlborough District Council*) where it was determined that Part 2 is relevant to the consideration of resource consents. This includes therefore the ability of the proposal to meet the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Furthermore, the matters of national importance in section 6 must be recognised and provided for, and particular regard must be had to the matters listed in section 7.
- [101] Of particular relevance to this application are sections 5(2)(a) "*sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations*", 5(2)(c) "*avoiding, remedying or mitigating any adverse effects of activities on the environment*", 7(b) "*the efficient use and development of natural and physical resources*" and 7(c) relating to amenity values.

- [102] As discussed in the assessment of effects above, the proposed development does not have adverse effects that are more than minor. The issue is related to the policy approach of the Plan, which is increasingly directive in relation to the anticipated activities in the Rural Zone as a result of decisions on the 2GP. The proposal is not consistent with the Plan's approach to the sustainable management of the Rural zone, particularly as expressed through the directive objectives and policies, and on that basis I consider the proposal to be inconsistent with the purpose of the Act as outlined in section 5 of that legislation.
- [103] Having regard to section 6 of the Act, section 6(a) requires the protection of the character of the coastal environment. The proposal will not have adverse effects on the quality of the coastal environment, and similarly will not be inconsistent with section 6(e) which refers to cultural matters.
- [104] Having regard to section 7(b), the proposed development would result in industrial and retail activities occurring on land which is considered appropriate for rural activity. This proposal seeks to use the site for industrial activities that could exclude other legitimate rural activities from the site in the future.
- [105] In regard to section 7(c), I consider that the proposal will maintain the amenity values of the area insofar as they are experienced by surrounding properties, but not in the wider context of the Plan and its expectations regarding the amenity of the wider City, the proposal does not sit comfortably.
- [106] With regard to section 7(f), the proposal is likely to change the quality of the existing environment, by introducing an intensive industrial and heavily vehicle oriented activity to the site. However, the site is to be surrounded by a bund and landscaped, and while the quality of the environment may change, overall the proposal will not be inconsistent with this section.

True exception (s104(1)(c))

- [107] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. The matters of precedent and integrity are considered relevant. These have been matters considered by the Environment Court when sitting in Dunedin. Case law starting with *A K Russell v DCC (C92/2003)* has demonstrated that when considering a non-complying activity as identified by the Dunedin City Council District Plan the Council is required to apply the 'true exception test'.
- [108] In paragraph 11 of the decision Judge Smith stated "*we have concluded that there must be something about the application which constitutes it as a true exception, taking it outside the generality of the provisions of the plan and the zone, although it need not be unique*". This was added to in paragraph 20 where the Judge stated, "*therefore, examining this application in accordance with general principles, we have concluded that the application must be shown to be a true exception to the requirements of the zone.*"
- [109] Consent is sought to establish retail and industrial activities on a rural site adjacent to a residential zone. Both the Operative and Proposed District Plans zone the site for rural purposes, and both have policies that discourage the establishment of non-rural activities. There are no characteristics of the site that have been identified as setting it aside as uniquely able to support the proposed activity, apart from convenient proximity to the State Highway. Similarly, the proposal does not have any specific characteristics that would enable it to be considered as a unique activity or a true exception to the zone provisions. An argument could be made that an application could be considered to be a true exception in circumstances where no suitable zoned sites were available for an activity; however, the proposed activities are best suited for the industrial zones, and in any event I note that the challenge presented by Policy 16.2.1.8 would still remain.

[110] I note that the 2GP includes a Rural Centre at Waitati that does provide for the types of activities proposed in the application, identified with lavender shading in the figure below.



[111] The potential to use land within this zone was addressed in the AEE accompanying the application and indicated that the site was discounted due to its proximity to residential neighbours, traffic volumes in the area and land availability. In this regard I note that the site at Coast Road is also close to residential properties, and the Rural Centre Zone provides for access onto local roads as does the Coast road site. Some of the zone is taken up by Blueskin nurseries, whereas the northern portion appears vacant.

[112] The Centre Zone provides for activities such as those proposed, whereas the rural zone does not, anticipating a higher level of amenity. I do not consider that the apparent unsuitability of a suitably zoned site to an applicant is sufficient to qualify setting the activity up on a differently zoned site is necessarily a true exception.

[113] The proposal should be assessed as to whether it challenges the integrity of the Plan and sets an undesirable perceived precedent, or whether it is a 'true exception' that takes it outside the generality of the plan and the zone.

[114] Non-complying activities have the potential to create an adverse precedent, which may challenge the integrity of the Plan by effectively providing for activities the Plan seeks to avoid in particular areas. In my opinion, as expressed above, there is nothing in relation to this proposal that could present a "true exception". In this regard, I consider that the proposed activity represents a challenge to the integrity of the District Plan as the activity will establish commercial and industrial activities which are not anticipated within the Rural zone and are in fact strongly discouraged by Policy 16.2.1.8 in particular.

[115] Approving non-complying activities has the potential to affect the integrity of the Plan provisions if such applications are consistently granted. Consideration must therefore be given as to whether granting consent will set an undesirable precedent, and consequently create an expectation in others that they can undertake similar land use applications. It must therefore be determined if there is enough distinction between this application and other commercial retail activities which may seek to establish in this zone. The issue of plan integrity has wider implications for the strategic direction of the City and, as such, the need to distinguish this application from other activities is crucial. I do not consider that there is anything that distinguishes this activity from others. Similar activities are provided for in the industrial zones, for example.

[116] I note that the decisions on the Proposed 2GP have included the strongly worded Policy 16.2.1.8, along with other policies that are directly relevant, and which do not lend support to the proposal.

[117] Taking the above into account it is my view, the proposal is not a true exception.

Section 104D

[118] Section 104D of the Act specifies that a resource consent for a non-complying activity must not be granted unless the proposal can meet one of two limbs. The limbs of section 104D require either that the adverse effects on the environment will be no more than minor, or that the application is for an activity which will not be contrary to the objectives and policies of either the relevant plan or the relevant proposed plan.

[119] This report earlier assessed the environmental effects of the proposal and concluded that, the adverse effects on the environment are likely to be no more than minor given the receiving environment of the proposal. Overall, I consider that the actual and potential effects associated with the proposed development are likely to be minor and the first 'gateway' test of section 104D is met. Only one of the two tests outlined by section 104D need be met in order for the Council to be able to assess the application under section 104(1)(a) of the Act.

[120] Nevertheless, and for completeness, it is noted that Section 104(1)(b)(iv) requires regard to be had to any relevant objectives and policies of a plan or proposed plan. As identified in this report, I consider that the application would, overall, be contrary with key objectives and policies of both the Operative and Proposed District Plans and, as such, the proposal cannot satisfy the second 'gateway' test outlined by section 104D.

[121] Recent case law has required that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.

[122] In summary, while the application does not pass both the threshold tests in section 104D of the Act, it is only required to meet one limb and therefore, consideration can therefore be given to the granting of the consent.

Conclusion and Recommendation

[123] Having regard to the decision making framework overall, I consider that the proposal is contrary to the key objectives and policies of both Plans in relation to the expected activities in the Rural zone, and will potentially undermine the integrity of the Second Generation District Plan, noting that it continues and strengthens the planning framework for the Rural zone as established in the Operative Plan, and could therefore be argued to create an undesirable precedent for industrial or retail uses in the Rural zone. In this regard I note particularly the strongly worded Policy 16.2.1.8 seeks to avoid establishing activities such as those for which consent is sought, and the Application is in direct conflict with this provision. As such I recommend that the application be declined.

REASONS FOR RECOMMENDATION

1. The proposed industrial and retail activities are considered to be contrary to key relevant objectives and policies of both the Operative and the Proposed District Plans.
2. The proposal is not contrary to the objectives and policies of the Regional Policy Statement for Otago.
3. The proposal will produce effects on the environment that are considered to be no more than minor with appropriate conditions in place.
4. The proposal is considered to be generally inconsistent with the Part 2 matters of the Resource Management Act 1991.

5. The proposal is not considered to be a true exception in this instance.
6. The proposal is likely to create an undesirable precedent.

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13 May 2019

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